

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M No.22347 of 2016 (O&M)

Decided on: 18.04.2018

Surjit Singh and another

....Petitioners

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. S.P. Soi, Advocate
for the petitioners.

Mr. Abhay Pal Singh Gill, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting-aside the order dated 23.05.2016 passed by the trial Court vide which the petitioners have been summoned as an additional accused in an application filed under Section 319 of the Code of Criminal Procedure (in short Cr.P.C.').

Counsel for the petitioners has submitted that after the respondent No.2 had lodged an FIR No.17 dated 15.03.2011 under Sections 363, 506, 148 and 149 of the Indian Penal Code (in short 'IPC'), the police investigated the matter and later on, both the petitioners were found innocent and an application dated 21.03.2011 (Annexure P3) was moved by the SHO, Police Station Mehatpur, before the trial Court for discharging both the petitioners and the trial Court vide order dated 21.03.2011 (Annexure P4) discharged the petitioners subject to submission of filing of the report under Section 173 Cr.P.C. It is further submitted that no challan was presented against the

petitioners under Section 173 Cr.P.C. and thereafter, the complainant – Amrjit Kaur appeared as PW1 and deposed on 14.11.2013 that the petitioner – Surjit Singh and Onkar Singh be also called and tried with the accused persons.

Counsel for the petitioners has further argued that neither any new evidence has come on record nor any over act has been attributed to the petitioners and merely on a statement made by the complainant that the petitioners be also called and tried with the accused persons, the trial Court has wrongly allowed the application by invoking the provisions of Section 319 Cr.P.C. Counsel for the petitioners has relied upon the judgment ***“Hardeep Singh vs State of Punjab and others” and other connected cases, 2014(1) RCR (Criminal) 623*** wherein the Hon'ble Supreme Court has held that while allowing the application under Section 319 Cr.P.C., the Court must record a finding that the evidence which has come on record is not mere re-recording of the statement made before the police under Section 161 Cr.P.C. but some cogent and reliable evidence should come on record. The operative part of the judgment in ***Hardeep Singh's case (supra)*** is reproduced below:-

“Question No. IV

Q.IV *What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?*

A. *Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated*

as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial – therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.”

Counsel for the petitioner has further relied upon the judgment **“Laxmi vs State of Haryana and another”, 2018(1) RCR (Criminal) 987**, wherein similar view has been taken by this Court.

A perusal of the record show that despite service, no one has appeared on behalf of respondent No.2.

Counsel for the State, on the other hand, has opposed the submissions made by counsel for the petitioners and submits that the trial Court has rightly allowed the application filed under Section 319 Cr.P.C.

After hearing counsel for the parties, I find merit in the present petition. A perusal of the record show that the petitioners were discharged initially on an application moved by the SHO, Police Station Mehatpur vide order dated 21.03.2011 and thereafter, the prosecution has moved an application under Section 319 Cr.P.C. after the statement

of PW1 – Amarjit Kaur. A perusal of the statement of PW1 show that no fresh evidence has come on record except that she has reiterated the version given to the police and has only stated that the petitioners namely Surjit Singh and Onkar Singh be also called and tried with the accused persons. In view of the judgment passed by the Hon'ble Supreme Court in *Hardeep Singh's case (supra)*, the present petition is allowed, the impugned order dated 23.05.2016 is set-aside and the matter is remanded back to the trial Court to pass a fresh order, in accordance with law.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

18.04.2018
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No