

Crl. Misc. No.M-5738 of 2018 (O&M)

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

**Crl. Misc. No.M-5738 of 2018 (O&M)
Date of decision : 01.03.2018**

Neelam Kumari

.....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Talim Hussain, Advocate
for the petitioner.

ANITA CHAUDHRY, J.

The petitioner is aggrieved by the dismissal of the application filed under Section 319 Cr.P.C. by the Magistrate and the order passed by the Additional Sessions Judge in revision.

I have heard the counsel for the petitioner at great length.

The counsel for the petitioner urges that the complainant had made allegations not only against the husband but also against the in-laws but the police had challaned only the husband and when the complainant stepped into the witness box she had named all those persons and similar statement has been made before the police and the trial Court as well as the Revisional Court have ignored the statements and have dismissed the application. Reliance was placed upon *Rakhi Mishra Vs. State of Bihar and others 2017(4) RCR (Criminal) 52*.

The power to summon additional accused is found in Section 319 Cr.P.C. and the Court can proceed even against those persons who are not arraigned as accused and it cannot be disputed. A Constitution Bench in *Hardeep Singh Vs. State of Punjab 2014(3) SCC 92* explained the purpose behind the provisions and it also settled the controversy on the issue whether the word 'evidence' used in Section 319 Cr.P.C. indicates the evidence collected during investigation or it was limited to the evidence recorded during trial. It was held that it is that material, after cognizance is taken by the Court, that is available to it while making an inquiry into or trying an offence, which the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the Court. The word 'evidence' has to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. It means that the power to proceed against any person after summoning him can be exercised on the basis of any such material as brought forth before it. At the same time, the Court cautioned that the duty and obligation of the Court becomes more onerous to invoke such powers consciously on such material after evidence has been led during trial. The Court also clarified that 'evidence' under [Section 319 Cr.P.C.](#) could even be examination-in-chief and the Court is not required to wait till such evidence is tested on cross-examination, as it is the satisfaction of the Court which can be gathered from the reasons recorded by the Court in respect of complicity of some other person(s) not facing trial in the offence.

The important question that would arise is what is the degree of satisfaction that is required for invoking the powers under Section 319 Cr.P.C. and the related question would be under what situations the power should be exercised in respect of a person named in the FIR but not challaned. These two aspects were detailed by the Constitution Bench in **Hardeep Singh's** case (supra) and answered in the following manner:-

“95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under [Section 319 CrPC](#), though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in [Vikas v. State of Rajasthan \[\(2014\) 3 SCC 321\]](#) , held that on the objective satisfaction of the court a person may be “arrested” or “summoned”, as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

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105. Power under [Section 319 CrPC](#) is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under [Section 319 CrPC](#). In [Section 319 CrPC](#) the purpose of providing if “it appears from the evidence that any person not being the accused has committed any offence” is clear from the words “for which such person could be tried together with the accused”. The words used are not “for which such person could be convicted”. There is, therefore, no scope for the court acting under [Section 319 CrPC](#) to form any opinion as to the guilt of the accused.”

The trial Court undoubtedly has the jurisdiction to add any person not being accused before it to face trial but only if the Court is satisfied that the persons who have not been arraigned as accused should face the trial. The trial Court can take a step to add such person as accused on the basis of evidence adduced before it. In so far as the material collected by the Investigating Officer at the stage of inquiry is concerned, it can be utilized for corroboration and to support the evidence recorded by the Court to invoke the power under [Section 319 Cr.P.C.](#) but the power under [Section 319 Cr.P.C.](#) is an extraordinary one and has to be exercised sparingly where the circumstances of the case so warrant.

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The trial Court as well as the Additional Sessions Judge dealt with the evidence and did not find the complicity of the other accused. The complainant was married to Kuldeep Singh in 2007. The FIR had been lodged after 7 years and allegations were made that soon after her marriage she was beaten up by the husband and his relatives. No MLR or any supporting material had been adduced during inquiry or in the Court. The police also could not lay hands on any material, which could point towards their involvement. Considering the principles laid down in *Hardeep Singh's* case (supra) it is found that both the Courts below were justified in dismissing the application. There was no evidence which hinted even a mere possibility of the complicity of the other persons named by the complainant.

The petition is dismissed.

01.03.2018
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No