

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

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**CRR No.3550 of 2017 (O&M)**

**Date of Decision: 05.07.2018**

**Gulshan Kumar**

**.....Petitioner**

**Vs.**

**State of Haryana and others .....Respondents**

**CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present:- Mr. N.K. Malhotra, Advocate for the petitioner.

Mr. K.S. Aulakh, DAG, Punjab.

Mr. Kushaldeep S. Sandhu, Advocate for  
respondent No.2.

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**Rajbir Sehrawat, J.(Oral)**

The present revision petition has been filed challenging the order dated 29.08.2017 passed by the Additional Sessions Judge, Hisar, whereby the application filed by the prosecution under Section 319 Cr.P.C for summoning of Vicky alias Vipin, Ganesha alias Naveen and Munish Narula to face the trial along with other co-accused has been dismissed.

It is contended by learned counsel for the petitioner that the trial Court has not taken into consideration the evidence recorded before the Court. The order has been passed by the trial Court on the basis of material which strictly does not qualify to be called an evidence as yet. Therefore, it is submitted that the order passed by the trial Court is perverse and deserves to be set aside.

On the other hand, learned counsel representing respondents submits that the trial Court has rightly passed the order. It is submitted by the counsel that it is the satisfaction of the trial Court which is to prevail while considering the matter under Section 319 Cr.P.C. Since the trial Court has passed a legal order declining summoning of the respondents as accused to face trial with other co-accused, therefore, no interference from this Court is required. Counsel further submits that on an application moved by the police, one of the respondents, namely, Munish was earlier discharged by the Court vide order dated 02.02.2017. That order was not even challenged by the prosecution. Therefore, permitting that person to be summoned under Section 319 Cr.P.C would be negating the earlier legal and validly passed order; whereby respondent- Munish was discharged. Hence, the present petition deserves to be dismissed.

Having heard the arguments of learned counsel for the respective parties and perusing the record, this Court finds that the impugned order cannot be sustained. Although the learned counsel for the respondents is right in submitting that it is the 'satisfaction' of the trial Court which is to prevail in the matter of deciding as to whether a person is required to be summoned for facing trial with other person, however, such a 'satisfaction' of the trial Court is always open to the question, at least, qua the relevance of the material which has been considered by the trial Court in arriving at such a satisfaction and qua the procedure followed in arriving at such satisfaction.

In the present case, the perusal of the order would show that the learned trial Court has referred to the statement made by the complainant at

the time of the lodging of the FIR alongwith certain other material which had come during the investigation by way of statements under Section 161 of Cr.P.C. It has also come on record that one witness had already been examined before the trial Court by the prosecution, and partly cross-examined also, and that statement of prosecution witness was very much available before the trial Court. Further, the statement of sole PW recorded by trial Court was referred to also by the prosecution for the purpose of moving an application under Section 319 Cr.P.C. The trial Court has even mentioned that statement of the prosecution witness in its order. However, while appreciating the material, the learned trial Court has not even discussed the relevance, significance or value of that statement qua the consideration under Section 319 Cr.P.C. Therefore, the relevant and most important material; available before the trial Court; and which was, necessarily, required to be considered by the trial Court; has been totally ignored from consideration while passing the impugned order. Therefore, the impugned order suffer from vice of non-consideration of relevant material at the time of its passing.

So far as the argument of the learned counsel for the respondent that one of the co-accused had been discharged on the application of the police only, therefore, he cannot be ordered to be summoned under Section 319 Cr.P.C is concerned, suffice it to say that such discharge order by the Court on an application of the police has the significance only of withdrawing the already report under Section 173 Cr.P.C against that particular accused. By any means, that discharge does not preclude either the prosecution from moving an application or the Court from considering

the matter under Section 319 Cr.P.C for summoning that person as an accused to face the trial along with other co-accused. Mere fact that a report under Section 173 Cr.P.C implicating a person is not filed or the same is withdrawn after filing, is totally insignificant consideration, so far as the proceedings under Section 319 Cr.P.C are concerned. In any case, the embargo against double jeopardy and protection available to the petitioner under the Constitution of India is that a person cannot be punished twice for the same offence. Same is the import of Section 300 of Cr.P.C, with additional protection that if a person is tried for an offence then he shall not be tried again after his acquittal or conviction.

Unless a discharge amounts to acquittal, the same cannot be a bar upon the power of the Court to summon a person under Section 319 Cr.P.C. As stated above, the order passed by the Court discharging one of the respondents was not even an order of discharge on a report presented under Section 173 Cr.P.C; on merits of the case; either under Section 227 or Section 258 of Cr.P.C; as prescribed under Section 300 of Cr.P.C. Rather it was an order based on and amounting to withdrawal of the report under Section 173 Cr.P.C against that particular person. Hence, this did not tantamount to acquittal of the said accused at all.

In view of the above, finding the impugned order to be non-sustainable, the same is set aside. The matter is remanded to the trial Court for considering the matter afresh. However, it is clarified that nothing said in this order shall be deemed to be an expression on merits of the case for any other purpose whatsoever.

**July 05, 2018**  
**renu**

**( RAJBIR SEHRAWAT )**  
**JUDGE**