

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

Sr. No.110

CRR-1046-2018

Date of decision : 19.03.2018

Rohtash

..... Petitioner

VERSUS

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Ms. Aditi Sheoran, Advocate for
Mr. Arjun Sheoran, Advocate, for the petitioner.

SUDHIR MITTAL, J. (Oral)

The petitioner seeks quashing of order dated 18.12.2017, whereby application moved under Section 319 Cr.P.C has been rejected by the learned trial Court.

In the FIR allegations were made by the complainant against Sonu, Rajender and wife of Rajender, namely, Ramrati. However, challan was presented only against Sonu @ Sunil son of Rajender.

After the examination of the complainant, namely, Rohtash as PW-7, an application under Section 319 Cr.P.C was moved for summoning Rajender as well as Ramrati as additional accused.

While deciding the application under Section 319 Cr.P.C, the learned trial Court has observed as follows:-

“From the perusal of statement which was made by the complainant to police, it reveals that he has levelled allegations against Sonu, Rajender and Ramrati by stating that accused Sonu and Rajender having containers in their hands and Ramrati having iron rod had come in his house; that accused Sonu and Rajender threw acid on his face and hand and Ramrati gave blows of iron rod on his back and buttock and then accused Sunil took over iron rod and caused blow of same on his forehead. He has further alleged that Rajender took out a paper and got written

something over it from him. The aforesaid allegations were duly investigated by the police and no such handwritten paper has been recovered. Regarding the alleged injuries caused by Ramrati, there is no mention of the same in the MLR of complainant. It is settled proposition of law that Court cannot summon a person as an additional accused and pass an order mechanically merely on the ground that some evidence has come on record implicating a person. Reliance in this regard is placed on case titled **‘Krishnappa Vs. State of Karnataka 2004(4) RCR Criminal 678’**, wherein it has been observed by Hon’ble Supreme Court that the Court should not summon a person as additional accused and pass an order mechanically merely on the ground that some evidence has come on record implicating the person but still proceeded to dispose of the application in a mechanical manner. Besides this, it is also proposition of law that summoning of a person as additional accused in exercise of discretion under Section 319 Cr.P.C cannot be made merely because some witnesses have mentioned the name of such person or that there is some material against that person. The discretion under Section 319 Cr.P.C is an extraordinary power which is conferred on the Court and hence same should be used very sparingly and only if compelling reasons exists for taking cognizance against the other person against whom action has not been taken. Reliance in this regard is made to case titled **‘Kailash Vs. State of Rajasthan and another reported as 2008(2) RCR 200.’** It has been also observed in case titled **‘Ram Singh and others Vs. Ram Niwas and another 2009 (3) RCR 501’** that power under Section 319 Cr.P.C. must be exercised very sparingly and not as a matter of course.’

Learned counsel for the petitioner has contended by relying upon **‘Hardeep Singh Vs. State of Punjab and others 2014(3), SCC 92’**, that while deciding an application under Section 319 Cr.P.C, the learned trial Court is required to be prima facie satisfied that the persons sought to be summoned have committed the offence. The submission is that the persons named as additional accused, have been attributed specific role in the FIR and the complainant has reiterated the same while getting his statement recorded as PW-7. In this view of the matter, the trial Court has erred in rejecting the application.

Hardeep Singh’s case (supra) lays down that while summoning a person as an additional accused, the Court should be satisfied on the basis of evidence brought on record that the said person is likely to have committed the offence complained of. However, the level of satisfaction has to be higher than existence of a prima facie case and less than the satisfaction required for convicting a person. In my opinion, this test is not satisfied in the present case as apart from the statement of the complainant, there is nothing on record to indicate the complicity of the private respondents. The learned trial Court has observed that the injuries allegedly caused by Ramrati (respondent No.3) are not corroborated by the MLR. No paper allegedly got signed by Rajender (respondent No.2) has been recovered and therefore, it cannot be said that the said persons were also involved in the alleged incident. There is no error in the impugned order.

Accordingly, the petition is dismissed.

(SUDHIR MITTAL)
JUDGE

19.03.2018

Ramandeep Singh

Whether speaking / reasoned

Whether Reportable

Yes / No

Yes/ No