

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

**CRR No.4795 of 2017 (O&M)
Decided on: 27.03.2018**

Jarnail Singh

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. R.S. Sekhon, Advocate
for the petitioner.

Ms. Samina Dhir, DAG, P unjab.

ARVIND SINGH SANGWAN, J.

Prayer in this revision petition is for setting-aside the impugned order dated 15.09.2017 passed by the Additional Sessions Judge, Ferozepur vide which the application filed by the prosecution under Section 319 Cr.P.C. for summoning respondents No.2 to 4 namely Sukhwinder Kaur, Mohan Singh and Gagandeep Kaur has been dismissed.

Brief facts of the case are that the petitioner got the FIR registered against accused persons with the allegation that on 11.10.2015 at about 10:30 am, the complainant was present in his house and accused – Jarnail Singh came to his house at about 11:00 am on his motorcycle and told the complainant to hand-over the car and further told that he will hand-over the money at his residence. The complainant, on his Innova car, carrying .32 bore pistol accompanied the accused – Jarnail Singh to his house where co-accused i.e. respondents No.2 to 4 were also present. The complainant was sitting in

a room and accused – Jarnail Singh demanded the registration certificate of the car on which the complainant asked to first hand-over the amount for purchasing the car and then he will hand-over the car. In this manner, the complainant and accused – Jarnail Singh @ Jolly entered into an altercation and in the meanwhile, respondents No.2 to 4 who are the mother, father and wife of the accused came there and Sukhwinder Kaur raised lalkara to teach a lesson and accused – Jarnail Singh picked up the licensed revolver of the complainant and on instigation of Gagandeep Kaur, he fired a shot which hit on the right side of the neck and left shoulder. The other accused also abused him and instigated accused – Jarnail Singh to kill him. Thereafter, the complainant picked up his revolver and called his friend who took him to civil hospital.

The police after investigation found accused Nos.2 to 4 innocent and submitted the challan against accused – Jarnail Singh @ Jolly. Thereafter, the trial Court framed the charge against the accused – Jarnail Singh under Section 307 IPC read with Section 27 of the Arms Act.

The complainant appeared as PW2 and reiterated the version given in the FIR. He was cross-examined by counsel for the accused – Jarnail Singh and thereafter, the prosecution filed an application for summoning the respondents No.2 to 4 as additional accused. In the application (Annexure P3) it is stated that the complainant/Jarnail Singh – PW2 has stated that accused – Sukhwinder Singh, Mohan Singh and Gagandeep Kaur actively participated in commission of offence, therefore, they be summoned as additional

accused to face the trial.

The trial Court vide impugned order dated 15.09.2017 dismissed the application filed under Section 319 Cr.P.C.

Counsel for the petitioner has submitted that from a bare perusal of the FIR and the statement of PW2, which is reiteration of the version given in the FIR, it is proved that the respondents No.2 to 4 have actively participated in commission of offence and, therefore, they are liable to be summoned as additional accused.

Counsel for the State, on the other hand, has submitted that during the enquiry conducted by the Superintendent of Police (Investigation) Ferozepur, the respondents No.2 to 4 were declared innocent and the enquiry was approved by the Senior Superintendent of Police, Ferozepur. It is further stated that in the application filed under Section 319 Cr.P.C., no overt act is attributed to respondents No.2 to 4 except the allegation that they have actively participated in the commission of the offence. It is further submitted that no fresh evidence has come on record to prove that respondents No.2 to 4 are liable to be summoned under Section 319 Cr.P.C. Counsel for the State 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'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.”

After hearing the counsel for the parties, I find no merit in the present revision petition. The police has found respondents No.2 to 4 who are the parents and wife of Jarnail Singh @ Jolly, who is facing the trial, as innocent person as per the enquiry conducted by the Superintendent of Police (Investigation), Ferozepur and the same was approved by the Senior Superintendent of Police, Ferozepur. A perusal of the FIR and the statement of the complainant – Jarnail Singh @ Jolly

who appeared as PW1 show that it is mere reiteration of the version given in the FIR and no overt act has been attributed and no fresh evidence has come on record.

The trial Court has also recorded a finding that there is no medical report on record regarding any fire arm injury as per the version given by PW1 – Jarnail Singh @ Jolly and, therefore, there is no sufficient evidence to summon respondents No.2 to 4 as additional accused.

In view of the above facts and circumstances and the law laid down in *Hardeep Singh's case (supra)*, I find no illegality or perversity in the impugned order dated 15.09.2017 passed by the Additional Sessions Judge, Ferozepur, dismissing the application filed by the prosecution under Section 319 Cr.P.C.

Dismissed.

27.03.2018
yakub

(ARVIND SINGH SANGWAN)
JUDGE

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