

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34237-2017(O&M)

Date of Order:16.05.2019

Sukhmander Singh and another

..Petitioners

Versus

State of Punjab and another

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Barjesh K. Sharma, Advocate
for the petitioners.

Mr. Bhupender Beniwal, AAG, Punjab

Mr. P.K.S.Phoolka, Advocate
for respondent no.2.

ANIL KSHETARPAL, J(Oral)

Challenge is to the orders passed by the learned trial Court allowing application under Section 319 Cr.P.C. which has been upheld in revision.

Learned counsel for the petitioners has contended that earlier also similar application was filed under Section 319 Cr.P.C. to summon Sukhmander Singh and his father Sarban Singh as additional accused which was dismissed by the trial court. However, learned Sessions Court in revision reversed the same but ultimately in CRM-M-17755-2013, this Court reversed the judgment of the Sessions Court. Resultantly, the application under Section 319 Cr.P.C. stood dismissed. He further submitted that the learned trial Court has passed the impugned order on the statement of PW4 Gursewak Singh, who was examined after application for

additional evidence was allowed. Learned counsel has drawn attention of the Court to paragraph 5 of the order passed by the learned Additional Chief Judicial Magistrate, wherein the Court has recorded that since against both the persons, specific allegations have been made, therefore, the application is being allowed. The order passed by the learned Additional Chief Judicial Magistrate has been upheld by the learned Additional Sessions Judge.

The Constitution Bench of the Hon'ble Supreme Court in the case of *Hardeep Singh vs. State of Punjab, (2014) 3 SCC, 92*, after interpreting Section 319 Cr.P.C. have gone on to hold that while deciding application under Section 319 Cr.P.C. the court is to record a *prima-facie* reasons after examining the evidence. Requirement is to form an opinion which should more than *prima-facie* case but lesser than the evidence on which the additional accused sought to be summoned can be convicted.

In the present case, learned courts below apart from examining the oral statement of Gursewak Singh has not examined the evidence collected by the Police and submitted before the Court while furnishing final report under Section 173 Cr.P.C. The Court while passing the order under Section 319 Cr.P.C. is required to examine entire evidence available to the Court at that stage and thereafter form an opinion.

Since, the courts have failed in this regard, therefore, the orders under challenge are set aside. The case is remitted back to the learned trial Court to re-consider the matter afresh in accordance with the requirements of law.

Parties through their counsels are directed to appear before the learned trial Court on 27.05.2019.

Needless to observe that the observations made by this court would not come in the way of the petitioners while passing fresh order.

Disposed of accordingly.

May 16, 2019
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(ANIL KSHETARPAL)
JUDGE

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