

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

**CRR-2133-2019(O&M)
Date of Decision: 30.08.2019**

Chander Lal Sharma

.....Petitioner

versus

The State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARI PAL VERMA

Present : Mr. Ashwani Verma, Advocate for the petitioner.

HARI PAL VERMA, J. (Oral)

CRM-26079-2019

For the reasons recorded in the application, the delay of 24 days in filing the present revision petition is condoned.

Application stands disposed of.

Main case

Petitioner Chander Lal Sharma, has filed the present revision petition impugning the order dated 26.04.2019, passed by learned Additional Sessions Judge, Bhiwani, whereby the application under Section 319 Cr.P.C. filed by the prosecution for summoning of Shree Niwas Sharma (respondent No.2 herein), Vijay and Poonam who are father-in-law, brother-in-law (*dever*) and sister-in-law (*nanad*) of the deceased, as additional accused alongwith other accused persons namely Krishan Kumar and Kamlesh, who are already facing trial, has been dismissed.

Briefly stated, FIR No. 376 dated 24.06.2018 was registered at

Police Station City Bhiwani under Sections 498-A/304-B/34 IPC at the

instance of petitioner-complainant against the accused persons on account of death of his daughter Anita. However, during investigation, the offence under section 304-B IPC was deleted and section 306 IPC was added in the FIR.

The petitioner in the application filed under Section 319 Cr.P.C. has stated that he had named all these persons as accused in his initial version, but the police did not challan them in collusion with the accused.

Learned Additional Sessions Judge, vide impugned order dated 26.04.2019 dismissed the said application by observing as under:-

“11. In the present case, the respondents-accused persons have stated that two of the proposed accused persons are settled elsewhere and one of them is a heart patient. Even if this would not have been stated by them then also it would not have been in the interest of justice to summon the proposed accused persons on the mere repetition of the initial version by the complainant in the court. The argument by the learned PP for the state is that the same allegations were leveled against all the accused persons but three of them have not been challaned by the police and thus they should be summoned as additional accused persons because for not challaning them no specific reason has been mentioned by the police but this argument is not tenable one because this fact shows that the police has investigated the matter thoroughly and when it found the involvement of only two accused persons, it challaned two of them and mentioned that remaining three were found innocent.

12. In such circumstances, this court is of the considered opinion that prosecution/complainant has not made out any case of summoning the proposed accused persons as additional accused and the complainant has only deposed the same version which he had already given to the police, whereas, the complainant/prosecution was required to prove more than

*prima facie case to summon the additional accused. After perusal of the statement of the complainant as PW3, this court is also of the opinion that in view of the law laid down by the Hon'ble Supreme Court of India in case **Hardeep Singh Vs. State of Punjab** Criminal Appeal No. 1750 of 2008 decided on 10.1.2014, these persons should not be summoned. In this ruling, it has been held that 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 of 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.*

13. *Therefore, in the absence of any specific allegation, the proposed accused cannot be allowed to suffer at the hands of complainant. As such, the complicity of Shree Niwas, Vijay and Poonam in the crime is not established and no substantive evidence exists against them which would warrant their prosecution with a good chance of conviction.”*

Counsel for the petitioner has argued that during the examination-in-chief, the complainant has specifically explained the role of the accused in the commission of crime. Therefore, the accused were sought to be summoned to face trial. He further states that the present revision petition is filed only for summoning of father-in-law.

Having heard, counsel for the petitioner, this court finds that there is no such material which may prima facie establish that the father-in-law is required to be summoned in the case except the statement of the

petitioner which is nothing but a repetition of the contents of the FIR. The contents of the FIR have already been looked into by the police, finding no material against the respondent No.2, he was not challaned.

This Court in the case of **Hukam Chand and another Versus State of Haryana & another-2007(3) RCR (Criminal) 141** has observed that when an accused is found innocent by the police and his name has been kept in column no.2, mere statement of the complainant, which is only reiteration of allegation made in the FIR, cannot be considered as additional evidence and, therefore, the Court cannot summon him solely on such statement, particularly when such statement has already been considered by the police. In order to summon a person under Section 319 Cr.P.C., there has to be some evidence before the Court which would indicate the complicity of the persons who are sought to be summoned. Mere statement of the complainant *ipso facto* cannot form the basis for summoning a person under Section 319 Cr.P.C. Further, reference may also be made to judgment of Hon'ble the Apex Court in the case of **Hardeep Singh Versus State of Punjab-AIR 2009 SC 483**, wherein it has been held that the power under Section 319 Cr.P.C. has to be exercised only if the Court is satisfied that the accused so summoned is in all likelihood would be convicted. Thus, when the facts of the present case are analyzed in view of judgment of Apex Court in **Hardeep Singh** (*supra*), it is found that the complainant has clearly failed to make out a case for summoning under Section 319 Cr.P.C.

Summoning of an accused should not be made in casual or mechanical manner. The prosecution must establish some prima facie case for summoning. Thus, summoning more particularly under Section 319 Cr.P.C. should be ordered sparingly unless there is material to substantiate.

The Hon'ble Supreme Court in the case in **Pepsi Foods Limited and another Versus Special Judicial Magistrate and others-(1998) 5 Supreme Court Cases 749** has held as under:-

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

In view of above, this Court does not find any illegality in the order passed by learned Additional Sessions Judge.

Accordingly, the present petition is dismissed.

30.08.2019

Sunita

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No