

111.

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

**CRM-28031-2019 IN/AND
CRR-3753-2018**

Date of decision: 18.09.2019

MAN SINGH

... Petitioner

versus

STATE OF HARYANA AND ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Bhisham Kumar Majoka, Advocate,
for the petitioner.

HARI PAL VERMA, J.(Oral)

CRM-28031-2019

Prayer in this application filed under Section 482 Cr.P.C. is for preponement of date of hearing of the main case which is otherwise fixed for 15.11.2019.

For the reasons stated in the application, same is allowed, hearing of main case is preponed and same is taken on board for hearing today itself.

CRR-3753-2018

Petitioner-complainant has filed the present revision petition against the order dated 05.09.2018 passed by learned Additional Sessions Judge, Faridabad, whereby his application filed under Section 319 Cr.P.C. seeking summoning of Sonu, Raju, Lovely and Smt. Phoola as additional accused, was dismissed.

Briefly stated, an FIR No.724 dated 03.12.2017, under Sections 363-A, 366, 376(2) of IPC and Section 4 of POCSO Act, Police Station S.G.M. Nagar, Faridabad, was registered at the behest of petitioner-complainant with the averments that his daughter was abducted by one Pappu, who is already facing trial, but in connivance with the persons sought to be summoned. While appearing as PW1, he narrated the entire occurrence and named respondents No.2 to 5, as accused. Thereafter, he filed an application under Section 319 Cr.P.C. seeking summoning of aforesaid persons as additional accused.

Counsel for the petitioner has argued that the petitioner in his statement has specifically named the persons sought to be summoned, but the trial Court, without application of mind, dismissed the application holding that no new material has come on record which prima facie shows the involvement of Sonu, Raju, Lovely and Smt. Phoola, as additional accused. He has relied upon the judgment of Hon'ble Apex Court in ***Rajesh and others Versus State of Haryana-2019(3) R.C.R. (Criminal) 133*** to contend that court can exercise powers to summon additional accused even on the basis of statement made in examination-in-chief of a witness.

Heard.

The ratio of law laid down by the Hon'ble Apex Court in ***Rajesh's case*** (supra) is not in dispute, however, summoning of additional accused is a serious issue and the court must not summon the accused in a mechanical manner. The Hon'ble Supreme Court 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 ***Hardeep Singh Versus State of Punjab (2014) 3 SCC 92***, it has been held by the Apex Court that the degree of satisfaction for invoking Section 319 Cr.P.C. should be of more than a prima-facie case, as exercised at the time of framing of charge, but short of satisfaction to an extent that evidence, if not rebutted, may lead to conviction of the person sought to be added as accused.

No new material has been brought on record which suggest the involvement of persons, namely, Sonu, Raju, Lovely and Smt. Phoola (respondents No.2 to 5), in the commission of crime. Even names of Raju and Smt. Phoola nowhere find mention in the complaint.

In the absence of any evidence, this Court does not find any ground for interference in the well reasoned order dated 05.09.2018 passed by learned Additional Sessions Judge, Faridabad.

Dismissed.

(HARI PAL VERMA)
JUDGE

18.09.2019
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No