

121

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

CRM-M-51923-2021

Date of decision : 13.12.2021

Neelam

...Petitioner

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE VIKAS BAHL**

Present: Mr. Nitish Bhatia, Advocate for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.  
(Through Video Conferencing)

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**VIKAS BAHL, J. (ORAL)**

This is a petition filed under Section 482 of Cr.P.C. for setting aside the order dated 21.08.2019 (Annexure P-1) passed by the Judicial Magistrate Ist Class, Rohtak, as also order dated 29.10.2021 (Annexure P-2) passed by the Additional Sessions Judge, Rohtak, vide which the application moved by the petitioner under Section 319 of Cr.P.C., had been dismissed and the revision petition filed against the same, had also been dismissed.

The brief facts of the case are that the petitioner had got one FIR No.696 dated 18.11.2015 registered under Sections 323, 354-A, 452, 506 and 34 of the Indian Penal Code, 1860 against three persons i.e. Dharmender (respondent No.2 herein), mother of Dharmender i.e. Kanta (respondent No.3 herein) and father of Dharmender i.e. Krishan (respondent No.4 herein). The police had investigated the case and had found that Kanta

and Krishan, who are the parents of Dharmender, were innocent and were not involved in the incident and accordingly, the challan was submitted only against Dharmender and not against Kanta and Krishan. The petitioner, through prosecution had filed an application under Section 319 of Cr.P.C., which was dismissed by the Judicial Magistrate Ist Class, Rohtak, vide order dated 21.08.2019 (Annexure P-1). The Judicial Magistrate Ist Class, Rohtak, while relying upon various judgments, had observed that the statements of the complainant and of PW7-Aman which were merely a reiterated version of what was stated in the complaint/FIR, had been duly considered by the Investigating Agency and Krishan and Kanta had been found to be innocent and as per settled law, merely on account of reiteration of the said allegations, the said persons could not be summoned under Section 319 of Cr.P.C.. It was further observed that no details were given in the said evidence as to how and in what manner, Neelam (petitioner herein) was beaten by Krishan and Kanta. It was further observed that the allegations against the said two persons were vague and general in nature. With respect to the affidavits submitted by the said two persons, argument of the respondents to the effect that the said affidavits were forged was recorded in para 5 of the said order and it was observed in para 11 of the said order that the complainant, while appearing in the witness box, had not referred to the said affidavits and at any rate, these affidavits were handed over to the Investigating Officer but in spite of the said affidavits, it was found by the Investigating Officer that the said two persons were innocent. It was observed that the investigation was conducted by SHO as well as DSP and they both found the said two persons to be innocent and

the challan was not presented against Krishan and Kanta and the matter was not even reported to any higher authorities thereafter. Various judgments had also been considered by the Court to observe that power under Section 319 of Cr.P.C. is to be exercised sparingly and only in a case, where there is enough evidence against the persons who are sought to be added as an additional accused. Revision petition filed by the petitioner against the said order was dismissed by detailed order dated 29.10.2021 (Annexure P-2) passed by the Additional Sessions Judge, Rohtak. In the said order, judgment of the Hon'ble Supreme Court in case titled as **Sarabjit Singh and another Vs. State of Punjab and another**, reported as **2009(3) RCR (Criminal) 388** was considered and it was observed that a person should be summoned under Section 319 of Cr.P.C. if the evidence on record is such which would reasonably lead to conviction of the said person who is sought to be summoned and not on the basis of the material which was already before the Investigating Agency and the said power is an extraordinary power and should be used sparingly. It was observed that PW7 had not levelled any specific allegations against the persons proposed to be summoned. It was further observed that no additional evidence had been led by the complainant to show the involvement of the proposed accused in the commission of the alleged offence and that PW1 in his cross-examination had submitted that she could not say as to who had scribed the affidavits and accordingly, the said revision petition was dismissed.

Learned counsel for the petitioner has relied upon the affidavit of Kanta (Annexure P-4) to show that she had committed the offence as alleged in the FIR. However, he has very fairly stated that in their respective

examination-in-chief, the said PW1 or PW7 had not referred to the said affidavits. He, on the basis of the said affidavits, has submitted that admission is the best piece of evidence against a person and thus, proposed accused should be summoned on the basis of the said affidavits alone.

This Court has heard the learned counsel for the petitioner and has perused the paper book.

It is not in dispute that the affidavits, which are sought to be relied upon by the learned counsel for the petitioner were with the Investigating Officer who, even after considering the said affidavits, had chosen not to proceed against Krishan and Kanta. The version given by the respondents was that the said affidavits are forged and fabricated. It is also not in dispute that the said affidavits were not referred to, in the examination-in-chief, by the complainant or other prosecution witnesses and thus, as per the settled law, no reliance can be placed upon the said documents which had not even been referred to by the witnesses while recording their examination-in-chief. In her cross-examination, PW1 had specifically admitted that she could not say as to who had scribed the said affidavits and thus, authenticity of the said affidavits is also questionable. Even the observations of the Courts below to the effect that there were no specific details given in the prosecution version, or even in their evidence, as to how and in what manner Krishan and Kanta had allegedly beaten up the complainant, have gone un rebutted. It has not been disputed that although, the said two persons were not challaned, yet no complaint was made to the higher officials with respect to this matter. The enquiry in the case had been conducted by the SHO as well as by the DSP, who had found the said

two persons to be innocent. Hon'ble the Supreme Court in **Sarabjit Singh's** (Supra), had observed as under:-

“xxx xxx

12. *The extent of the power of a Sessions Judge to summon persons other than the accused to stand trial in a pending case came up for consideration before this Court in [Municipal Corporation of Delhi v. Ram Kishan Rastogi](#) [(1983) 1 SCC 1]. Therein, this Court while holding that the provision confers a discretionary jurisdiction on the court added "this is really an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken*

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16. *We have noticed hereinbefore that Mohd. Shafi (supra) has been explained in Lal Suraj (supra) holding that a power under [Section 319](#) of the Code can be exercised only on the basis of fresh evidence brought before it and not on the basis of the materials which had been collected during investigation particularly when a final form was submitted and the same had been accepted by the Magistrate concerned. There is no gainsaying that the power under [Section 319](#) of the Code is an extraordinary power which in terms of the decision of this Court in [Municipal Corporation of Delhi \(supra\)](#) is required to be exercised sparingly and if compelling reasons exist for taking cognizance against whom action has not been taken.*

17. *The provision of [Section 319](#) of the Code, on a plain reading, provides that such an extraordinary case has been made out must appear to the court. Has the criterion laid down by this Court in [Municipal Corporation of Delhi](#)*

*(supra) been satisfied is the question? Indisputably, before an additional accused can be summoned for standing trial, the nature of the evidence should be such which would make out grounds for exercise of extraordinary power. The materials brought before the court must also be such which would satisfy the court that it is one of those cases where its jurisdiction should be exercised sparingly.*

We may notice that in *Y. Saraba Reddy v. Puthur Rami Reddy and Anr.* [JT 2007 (6) SC 460], this Court opined:

*"...Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates that evidence of witnesses given in Court..."*

*An order under Section 319 of the Code, therefore, should not be passed only because the first informant or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be assigned by the court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. Such an evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction.*

*For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.*

*18. The observation of this Court in Municipal Corporation of Delhi (supra) and other decisions following the same is that mere existence of a prima facie case may not serve the purpose. Different standards are required to be*

*applied at different stages. Whereas the test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, the court must be satisfied that there exists a strong suspicion. While framing charge in terms of [Section 227](#) of the Code, the court must consider the entire materials on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction. Whether a higher standard be set up for the purpose of invoking the jurisdiction under [Section 319](#) of the Code is the question. The answer to these questions should be rendered in the affirmative. Unless a higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down, the ingredients thereof, viz., (i) an extraordinary case and (ii) a case for sparingly exercise of jurisdiction, would not be satisfied.”*

Both the Courts below have observed that an extraordinary case has not been made out so as to exercise the powers under Section 319 of Cr.P.C. in order to summon the additional accused i.e. Krishan and Kanta.

This Court while exercising the powers under Section 482 of Cr.P.C. is not acting in the capacity of an Appellate Court and since no material irregularity or illegality has been pointed out in the impugned order and also keeping in view the observations made in the aforesaid paras and the law laid down by the Hon'ble Supreme Court in the aforesaid judgment, the present petition filed under Section 482 of Cr.P.C. is dismissed.

**13.12.2021**

*Pawan*

**(VIKAS BAHL)  
JUDGE**

**Whether speaking/reasoned:-  
Whether reportable:-**

**Yes/No  
Yes/No**