

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

**CRM-M-1328-2018 (O&M)
Date of decision: 12.07.2022**

Rajesh and another ...Petitioners

Versus

State of Haryana and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Ankur Sidhar, Advocate for
Mr. Rajesh Khandelwal, Advocate for the petitioners.

Mr. Ashok Singh Chaudhary, Addl. AG Haryana.

HARNARESH SINGH GILL, J.

Prayer in the present petition is for quashing of FIR No. 164 dated 06.05.2016, registered under Sections 323 and 342 read with Section 34 IPC and later on added Section 302 IPC, at Police Station Narnaund, District Hisar, as well as the summoning order dated 24.08.2017 and the order dated 29.11.2017, framing the charges passed by the Additional Sessions Judge, Hisar and all the subsequent proceedings arising therefrom, qua the petitioners.

Learned counsel for the petitioners submits that though initially, the petitioners were named in the FIR, but in a detailed investigation conducted by the police, they were found innocent and accordingly, on an application moved by them for discharge, the learned Court of the Judicial Magistrate, Ist Class, Hansi, had discharged them vide order dated 16.06.2016; that the said order was not challenged by the prosecution; that during the trial before the learned Additional Sessions Judge, Hisar, the prosecution had moved an application under Section 319 Cr.P.C. and that vide order dated 24.08.2017, the petitioners were summoned and thereafter,

the charges were also framed against the petitioners vide order dated 29.11.2017.

Learned counsel for the petitioners, while vehemently relying upon the statutory provisions of Sections 300(5) and 398 Cr.P.C., would submit that the learned Additional Sessions Judge, Hisar, fell in error of law, inasmuch as there is an utter non-compliance of the said provisions and in this regard, he commends this Court to the judgment of the Hon'ble Supreme Court in Hardeep Singh vs. State of Punjab and others, 2014(1) RCR (Criminal) 623.

Sections 300(5) and 398 Cr.P.C., would read as under:-

“Section 300(5) - A person discharged under section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first- mentioned Court is subordinate.

398. Power to order inquiry. On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrate subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub-section (4) of section 204, or into the case of any person accused of an offence who has been discharged: Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.”.

A perusal of the aforesaid provisions would reflect that the power ingrained in Section 300(5) Cr.P.C., is subject to the provisions of Section 398 Cr.P.C., stipulating that no Court shall make any direction under this section

for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

Learned counsel for the petitioners vociferously argues that once, the petitioners stood discharged, any order/direction incriminating them again, must precede grant of an opportunity to them to show cause, why such directions should not be made besides a mandated inquiry in this regard.

In Hardeep Singh's case (supra), the Hon'ble Apex Court, has held as under:-

“108. Both these provisions contemplate an inquiry to be conducted before any person, who has already been discharged, is asked to again face trial if some evidence appears against him. As held earlier, Section 319 Cr.P.C. can also be invoked at the stage of inquiry. We do not see any reason why inquiry as contemplated by Section 300(5) Cr.P.C. and Section 398 Cr.P.C. cannot be an inquiry under Section 319 Cr.P.C. Accordingly, a person discharged can also be arraigned again as an accused but only after an inquiry as contemplated by Sections 300(5) and 398 Cr.P.C. If during or after such inquiry, there appears to be an evidence against such person, power under Section 319 Cr.P.C. can be exercised. We may clarify that the word ‘trial’ under Section 319 Cr.P.C. would be eclipsed by virtue of above provisions and the same cannot be invoked so far as a person discharged is concerned, but no more.

109. Thus, it is evident that power under Section 319 Cr.P.C. can be exercised against a person not subjected to investigation, or a person placed in the Column 2 of the Charge-Sheet and against whom cognizance had not been taken, or a person who has been discharged. However, concerning a person who has been discharged, no proceedings can be commenced against him directly under Section 319 Cr.P.C. without taking recourse to provisions of Section 300(5) read with Section 398 Cr.P.C.”

Learned State counsel, while rebutting the arguments of the learned counsel for the petitioners, submits that the learned Additional Sessions Judge, Hisar, has summoned the petitioners, as additional accused, only on the basis of evidence on record and there is no illegality in the said order.

I have heard the learned counsel for the parties and have also gone through the impugned order.

As noticed above, the petitioners were discharged vide order dated 16.06.2016 passed by the learned Judicial Magistrate 1st Class, Hansi. The said order was not challenged by the prosecution. The petitioners were summoned by the Additional Sessions Judge, Hisar, by exercising the powers under Section 319 Cr.P.C. However, a perusal of the impugned order would show that no compliance of the provisions of Sections 300(5) read with Section 398 Cr.P.C. was done, as mandated in Hardeep Singh's, case (supra).

In view of the above, the petition is allowed. The impugned orders dated 24.08.2017 and the order 29.11.2017, qua the petitioners, are set aside. However, it would be open to the Court concerned, to proceed against the petitioners, in accordance with law.

12.07.2022

Mangal Singh

**(HARNARESH SINGH GILL)
JUDGE**

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No