

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

CRR-657-2022

Date of Decision: 07.12.2022

Kulwinder Kaur

..... Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

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

Rajesh Bhardwaj, J.

Petitioner has approached this Court by way of filing the present revision petition impugning order dated 04.03.2022, passed by the learned Addl. Sessions Judge, FTC/Special Judge, Ludhiana, whereby, application filed by the petitioner under Section 319 Cr.P.C. for summoning respondents No.2 and 3 as additional accused in case FIR No.212, dated 2.10.2020, registered under Sections 376, 420 IPC, at Police Station Division No.7, District Ludhiana, has been declined.

As per facts of the case, the FIR in question was lodged by the prosecutrix against the accused, namely, Suresh Saini alongwith Raj Rani @ Raj Kumari (respondent No.2) and Avtar Prithvi Raj (respondent No.3). On the registration of the FIR, the investigation was carried out, however, the Investigating Agency found the allegations not substantiated against accused respondents No.2 and 3 and hence, they were kept in column No.2, whereas, the challan was presented only against accused Suresh Saini. The prosecutrix was examined as PW-1 by the trial Court and in her examination-in-chief, she reiterated her allegations against respondents No.2 and 3 and then, application under Section 319 Cr.P.C. for summoning both the accused to face the trial alongwith co-accused Suresh Saini was filed. The learned trial Court after hearing both the sides, did not find any

merit in the application filed and thus, declined the same vide impugned order dated 04.03.2022. Aggrieved by the same, the petitioner has approached this Court by way of filing the present revision petition.

Learned counsel for the petitioner has vehemently contended that the view taken by the learned trial Court in declining the application filed under Section 319 Cr.P.C. is totally unsustainable in the eyes of law. He submits that the petitioner lodged the present FIR against respondents No.2 and 3 having committed a heinous offence with her. He submits that there were specific allegations made by the prosecutrix against the said respondents-accused. He has submitted that both the respondents-accused have participated in conspiracy hatched by them alongwith the main accused Suresh Saini. The Investigating Agency carried out the investigation in haste and hence, declared both the respondents-accused as innocent. He further submits that the prosecutrix entered into witness box as PW-1 and in her examination-in-chief, she specifically deposed regarding the complicity of both the respondents. However, the learned trial Court has failed to appreciate the same. Both the respondents-accused were party in conspiracy of rape. He has submitted that the statutory power under Section 319 Cr.P.C. is an extraordinary power, which is there to prevent the miscarriage of justice, however, the learned trial Court has failed to appreciate the same and thus, rejected the application under Section 319 Cr.P.C. filed by the petitioner in a mechanical manner. He has submitted that the learned trial Court has failed to appreciate the law settled by Hon'ble Supreme Court in case of Hardeep Singh vs. State of Punjab and others, (2014) 3 SCC 92 and hence, the impugned order dated 04.03.2022

declining the application under Section 319 Cr.P.C. filed by the petitioner-prosecutrix for summoning the respondents-accused, deserves to be set aside.

Heard.

Evidently, the FIR has been lodged by the prosecutrix against three accused i.e. Suresh Saini and both respondents No.2 and 3. The Investigating Agency carried out a thorough investigation, wherein, the allegations against Suresh Saini were found to be substantiated, however, no evidence could be found for substantiating the allegations against both the respondents. Resultantly, both were declared innocent by the Investigating Agency and in the challan filed under Section 173 Cr.P.C., both were kept in column No.2. However, the prosecutrix when appeared before the trial Court as PW-1, she reiterated the allegations against all the three accused named in the FIR. She filed application under Section 319 Cr.P.C. for summoning both the respondents-accused to face the trial alongwith co-accused Suresh Saini. To understand the controversy in the case, statutory provisions of Section 319 Cr.P.C. is necessary to be considered, which is reproduced as under:-

“Section 319. Power to proceed against other persons appearing to be guilty of offence-(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under subsection (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

The Constitution Bench of Hon'ble Supreme Court in **Hardeep Singh's** case (supra) has held that the satisfaction of the Court against the proposed accused for summoning him/her to face the trial should be more than required at the time of framing of charge. Relevant paras of the same are reproduced as under:-

“98. Power under [Section 319](#) Cr.P.C. is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

99. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of

satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under [Section 319 Cr.P.C.](#) In [Section 319 Cr.P.C.](#) the purpose of providing if ‘it appears from the evidence that any person not being the accused has committed any offence’ is clear from the words “for which such person could be tried together with the accused.” The words used are not ‘for which such person could be convicted’. There is, therefore, no scope for the Court acting under [Section 319 Cr.P.C.](#) to form any opinion as to the guilt of the accused.”

From facts and circumstances of the present case when weighing on the anvil of the law settled, it is apparent that there was no material before the trial Court, which could be termed as sufficient or more than *prima facie* case made out for framing of charge. Hon'ble Supreme Court has held that the Court should refrain from exercising its power under [Section 319 Cr.P.C.](#) in a mechanical manner. It has been held that power under [Section 319 Cr.P.C.](#) should be used sparingly in exceptional circumstances.

Weighing the facts and circumstances of the present case on the anvil of law settled by the Hon'ble Supreme Court, this Court is of the opinion that the trial Court has rightly declined the application for summoning the respondents-accused, as it would be nothing but an futile exercise and would defeat the ends of justice. Resultantly, the present petition is dismissed being devoid of any merit.

07.12.2022

sharmila

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)

JUDGE

Yes/No
Yes/No