

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

Reserved on 31st August, 2022

Pronounced on 5th September, 2022

CRM-M No.1950 of 2018

Sunita

....Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Suneel Ranga, Advocate
for the petitioner.

Mr. Ramesh K. Ambavta, Asstt. Advocate General, Haryana
for respondent No.1/State.

Mr. Chanderhas Yadav, Advocate
for respondents No.2 and 3.

PANKAJ JAIN, J. (ORAL)

By way of present petition filed under Section 482 Cr.P.C., the petitioner has laid challenge to the impugned order dated 19th of January, 2017 (Annexure P-3) whereby the application filed by the prosecution u/s 319 Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') for summoning respondents No.2 and 3 as additional accused(s) stands dismissed.

2. Ld. Counsel for the petitioner has taken this Court to the impugned order passed by the Judicial Magistrate 1st Class, Jhajjar, dated 19th of January, 2017, whereby the application filed u/s 319 Cr.P.C. has been dismissed holding that :-

“15. From the perusal of the facts and circumstances of the case in hand, it is relevant that there is no evidence, at this stage, to substantiate the averments of the complainant that the said Renu Yadav and Jai Prakash were involved into alleged commission of the offence. The prosecution has provided a list of 15 witnesses alongwith challan submitted under Section 173 of Cr.P.C. and 12 witnesses at all are yet to be examined in this case. The cross-examination of PW Sunita and Raj Kumar has also not been completed. There is no material available on record at this stage which may suggest to this court that the evidence on record is sufficient which would reasonably lead to the conviction of the proposed accused Renu Yadav and Jai Prakash. This court is having a view that the present application is pre-mature at this stage. There is no cogent and convincing evidence produced on the case file before this court to believe that the proposed accused have committed the said offence that they should be tried together with the co-accuse in this case. In this backdrop, wherein police after due inquiry of the matter, has come to the conclusion that this proposed accused were not at all involved in the crime, their summoning at this stage under Section 319 Cr.P.C. is not at all made out. It appears that the present application is filed with the ulterior motive to linger on the trial of the present case.”

3. Ld. Counsel for the petitioner submits that the reasoning given by the Trial Court is in teeth of law laid down by the Constitutional Bench of Apex Court in '**Hardeep Singh vs. State of Punjab**', 2014(3) SCC 92. He submits that the said order has been affirmed by the Revisional Court. He, thus, submits that the impugned order being in teeth of law laid down in

Hardeep Singh's case (supra) cannot be sustained and deserves to be set aside.

4. Per contra, Mr. Chanderhas Yadav, Advocate appearing for respondents No.2 and 3 is not in position to dispute that the Ld. Magistrate dismissed application u/s 319 Cr.P.C. only for the reason that the cross-examinations of PWs Sunita and Raj Kumar were not complete. However, he submits that the Revisional Court has examined the case on merits and found that there was nothing incriminating against the respondents and, therefore, application u/s 319 Cr.P.C. deserves merit dismissal.

5. I have heard Ld. Counsel for the parties and have gone through the records of the case.

6. Ld. Counsel for respondents No.2 and 3 is not in position to dispute the fact that the impugned order passed by the Trial Court is in teeth of the law laid down in **Hardeep Singh's** case (supra).

7. Consequently, the impugned orders dated 19th of January, 2017 and dated 9th of November, 2017 are hereby set aside.

8. Trial Court is directed to decide the application filed by the petitioner u/s 319 Cr.P.C. for summoning respondents No.2 and 3 as additional accused, afresh in light of law laid down in **Hardeep Singh's** case (supra).

9. Needless of observe herein that the instant order has been passed merely on account of the fact that the application u/s 319 Cr.P.C. cannot be dismissed for absence of cross-examination of the witness as per

law laid down in **Hardeep Singh's** case (supra). This Court has not examined the merits of the application. Thereby, nothing observed herein shall be construed to be an opinion on the merits of the case.

September 05, 2022
Dpr

(PANKAJ JAIN)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No