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

**CRR No. 1418 of 2022**  
**Date of Decision: 12.07.2022**

Jaswinder Singh and another

....Petitioner(s)

Versus

State of Punjab

.....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI**

Present: Mr. K.B. Raheja, Advocate, for the petitioners.

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**JASGURPREET SINGH PURI, J. (Oral)**

The present is a revision petition filed impugning the order dated 07.06.2022 passed by the learned Sessions Judge, Faridkot by which both the petitioners have been summoned under Section 319 of the Code of Criminal Procedure to face trial under Sections 302, 307 IPC read with Section 34 IPC and Section 27 of Arms Act in FIR No.76 dated 01.06.2021, P.S Sadar, Kotkapura, District Faridkot.

The learned counsel for the petitioners has submitted that it is a case where both the petitioners were earlier nominated in the FIR as accused but during the course of investigation it was found by the police that both the petitioners were not present at the spot. So far as the petitioner Jaswinder Singh is concerned, as per the investigation, he was at his home which is about 3 kms. from the place of incident and to that effect statement of shop-keeper around his house was recorded by the police and

so far as the other petitioner namely Jasvir Singh is concerned, at that relevant time he was at another place where he had purchased an AC regarding which a receipt is also part of the record and he was also seen in the CCTV footage of the petrol pump from where he filled up fuel after purchasing the AC. He further submitted that by way of impugned order by which the petitioners have been summoned, the learned Court has not applied the principles laid down by a Constitution Bench of the Hon'ble Supreme Court in ***Hardeep Singh Versus State of Punjab and others [2014(3) SCC 92]*** and no *prima facie* satisfaction has been recorded. He further submitted that there was other sufficient material available not only in the statements but also has become part of the challan to show that both the petitioners were not involved in the present case and that is why they were exonerated by the police. He further submitted that when the statement of the complainant namely Sukhwinder Kaur was recorded and thereafter, on the basis of which the application under Section 319 of the Code of Criminal Procedure was allowed, it will be seen that the statement was only a reiteration of the allegations contained in the FIR itself except with one improvement that Jasbir Singh also fired with his double barrel gun and has submitted that all the material which was available with the Court was not considered at the time of passing of the impugned order. He further submitted that for the purpose of summoning under Section 319 of the Code of Criminal Procedure, cogent and proper reasoning has to be given by the Court since the summoning under Section 319 of the Code of Criminal Procedure is to be done in a more careful manner and the standard of proof is also strict. He relied upon the judgment of the Hon'ble Supreme Court in the case of ***Hardeep Singh Versus State of Punjab and others***

*(Supra)* to contend that it was a duty of the Court to have analysed and considered the entire material available on record and should have recorded its prima facie satisfaction as to whether the petitioners should be summoned under Section 319 of the Code of Criminal Procedure or not but the same has not been done.

On the other hand, Mr. Davinder Bir Singh, learned Deputy Advocate General, Punjab has submitted that so far as the applicability of proposition of law as enunciated by Hon'ble Supreme Court in its Constitution Bench in ***Hardeep Singh Versus State of Punjab and others (Supra)*** is concerned, the same is not in dispute. He further submitted that he has no objection in case the matter be remanded back to the learned Sessions Judge, Faridkot for taking a fresh decision in accordance with the law and according to principles laid down by the Hon'ble Supreme Court in ***Hardeep Singh Versus State of Punjab and others (Supra)***.

Mr. Paramjeet Singh Brar, learned counsel for the complainant has also caused appearance today and he has also stated that he has no objection in case the matter is remanded back to the learned Sessions Judge, Faridkot for deciding the application under Section 319 of the Code of Criminal Procedure afresh by applying the principles of law laid down by the Constitution Bench of the Hon'ble Supreme Court in ***Hardeep Singh Versus State of Punjab and others (Supra)***.

I have heard the learned counsel for the parties.

A perusal of the impugned order dated 07.06.2022 would show that although the learned Sessions Judge, Faridkot has referred to the allegations in the FIR and other material but at the time of considering and deciding the application under Section 319 of the Code of Criminal

Procedure, a *prima facie* satisfaction has not been recorded and it appears that the principles of law laid down by the Hon'ble Supreme Court in ***Hardeep Singh Versus State of Punjab and others (Supra)*** have not been properly followed. Learned counsel for the State as well as learned counsel for the complainant have stated that they have no objection in case the application under Section 319 of the Code of Criminal Procedure is decided afresh by applying the law laid down by the Hon'ble Supreme Court in ***Hardeep Singh Versus State of Punjab and others (Supra)***.

In view of the aforesaid position, this Court is of the considered opinion that the present revision petition deserves to be allowed. The order dated 07.06.2022 is hereby set aside. The learned Sessions Judge, Faridkot is directed to consider the application under Section 319 of the Code of Criminal Procedure afresh and to pass a fresh order after applying the ratio laid down by the Constitution Bench of Supreme Court in ***Hardeep Singh Versus State of Punjab and others (Supra)***. The said application is to be decided afresh as expeditiously as possible and in accordance with law.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is meant for the purpose of deciding the present petition only.

12.07.2022

rakesh

(JASGURPREET SINGH PURI)  
JUDGE

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|--------------------|---|--------|
| Whether speaking   | : | Yes/No |
| Whether reportable | : | Yes/No |