

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

CRR No.4885 of 2017(O&M)

Date of Decision.24.02.2022

Rahul

...Petitioner

Vs

State of Haryana and another

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. A.K. Jindal, Advocate
for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana.

Mr. Diwan S. Adlakha, Advocate
for respondent No.2

-.-

JAISHREE THAKUR J. (ORAL)

CRM No.41749 of 2017

Prayer in the application is for condonation of delay of 142 days in filing the instant revision petition.

For the reasons stated in the application, the same is allowed and delay of 142 days in filing the revision petition stands condoned.

CRR No.4885 of 2017

1. The petitioner herein seeks to challenge the order dated 21.04.2017 passed by the Additional Sessions Judge, Yamuna Nagar by which the petitioner has been summoned as an additional accused in FIR No.139 dated 22.04.2016 registered under Sections 367 and 120-B IPC at Police Station Farakpur on an application under Section 319 Cr.P.C.

2. In brief, the facts are that the FIR was registered on statement of one Paras Kamboj @ Robin son of Raj Kumar, caste Kamboj under Section 367 IPC read with Section 120-B IPC on the allegation that he and his relative Rahul had a meal together and thereafter, they went for a walk, when a white colour Swift Car, number

of which, could be HR-05AD/1020 or 1050 came and stopped near them. One boy came out of the car and forcibly made the complainant sit inside the car. After that, two more persons came and sat in the car with him. Two more boys namely Rahul son of Kanwar Pal, caste Kamboj, resident of Rindal and Shanky s/o Mahender, caste Kamboj, resident of Nabipur were present but they did not sit in the car. His relative ran away from the spot and the complainant was taken in the car. The complainant shouted but the boys in the car strangled him and were talking to Ankush and other boys sitting in the car. A gun was pointed at him and one boy said that *“Mahender has only given Rs.5 lakhs to us and do not kill him for Rs.5 lakhs.”* He was taken out of the car and given severe beatings with iron and wooden rods lying there and thereafter, he was left behind. He walked for a distance and found a person, who gave him water and informed his family members, who took him to the hospital. The reason for the rivalry is that Mahender Singh had a fight with father of the complainant and his uncle Om Parkash.

3. The matter was investigated and challan presented qua Ankush, Jasbir, Rohit, Rahul son of Roshan Lal, Vijay son of Ram Pal, Jasbir Rana son of Jassi, Mahender Singh son of Prabhu Ram and Rohit @ Kaka son of Krishan Singh. The statement of the complainant was recorded wherein he reiterated contents of the FIR and thereafter, an application under Section 319 Cr.P.C. was filed to summon the petitioner herein as an additional accused. The trial court by its order dated 21.04.2017 allowed the application summoning the petitioner as an accused to face trial. Aggrieved against the same, instant petition has been filed by the petitioner.

4. Learned counsel appearing for the petitioner herein has assailed the said order by contending that a thorough investigation was done by the investigating agency and the petitioner herein had been found innocent. The petitioner raised the plea of *alibi*, which was accepted. It is argued that the order summoning the petitioner herein is, in fact, a non-speaking order as there is no satisfaction recorded

by the Court as to the culpability of the petitioner to summon him under Section 319 Cr.P.C. He would rely upon the judgment rendered by the Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab and others 2014 (1) RCR (Criminal) 623*** as well as the subsequent judgment rendered in ***Ramesh Chandra Srivastava Vs. State of U.P. and another 2021 (4) RCR (Criminal) 219*** and the judgment rendered by this Court in ***Harjap Singh Vs. State of Punjab and another 2020 (4) RCR (Criminal) 505*** to argue that a person ought to be summoned as an additional accused by invoking power under Section 319 Cr.P.C. only when strong and cogent evidence occurs against such person. Power to summon ought not to be exercised in a casual and cavalier manner.

5. Learned counsel appearing on behalf of the respondent-State as well as the complainant would argue that there were specific allegations that the petitioner herein was present at the time when the complainant was allegedly abducted and taken away in a car. It is submitted that both the statements recorded in the Court would be evidence enough to establish the culpability of the petitioner and therefore, there is no infirmity in the order summoning the petitioner herein as an additional accused.

6. I have heard learned counsel for the parties and have perused the impugned order as well as the case laws cited. The facts are not in dispute regarding the petitioner being summoned as an additional accused on statement given by the complainant before the trial court and on an application having been preferred under Section 319 Cr.P.C. However, a perusal of the order would reflect that the trial court has ignored the report under Section 173 Cr.P.C., by stating that there is no plausible explanation given regarding the innocence of the petitioner herein, who had been named in the FIR. The reason for summoning the petitioner as an accused is based entirely on not accepting the report under Section 173 Cr.P.C. by the Additional Sessions Judge, Yamuna Nagar or the plea of *alibi* raised by the petitioner. A

reading of the judgment rendered by the Hon'ble Supreme Court in **Hardeep Singh's case** (supra) lays down the mandatory requirement for summoning a person as accused under Section 319 Cr.P.C. Relevant paragraphs of the same are reproduced as under:-

“98. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary 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.”

7. The Court is to record its satisfaction to the extent that the evidence, if goes un rebutted, would lead to conviction. In the instant case, the trial court has not discussed or recorded its satisfaction to that extent. A mere repetition of the contents of FIR by the complainant in his statement recorded in the court would not be enough to summon a person to face trial under Section 319 Cr.P.C. Therefore, this Court has no hesitation in setting aside the impugned order and remanding the matter back to the trial court to decide the matter afresh within a period of two months from the date of receipt of certified copy of this order.

8. The instant revision petition stands disposed of in above terms.

9. The other misc. applications, pending as on date, also stand disposed of.

(JAISHREE THAKUR)
JUDGE

February 24, 2022

Pankaj*

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No