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

**CRR-1384-2021 (O&M)
Date of Decision: 15.11.2022**

Chamkaur Singh and another

..... Petitioners

Versus

State of Punjab and another

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Puneet Sharma, Advocate,
for the petitioners.

Mr. Amit Rana, Sr. DAG, Punjab.

Mr. Surinder Garg, Advocate,
for respondent No.2.

JASGURPREET SINGH PURI, J. (ORAL)

The present revision petition has been filed for assailing the order dated 07.10.2021 passed by the learned Sessions Judge, Sri Muktsar Sahib vide which both the petitioners, namely, Chamkaur Singh and Dalour Singh have been summoned as additional accused with the aid of Section 319 Cr.P.C.

It has been submitted by learned counsel for the petitioner that it is a case where the allegations against the petitioners and the other co-accused were that due to some dispute of the co-accused, namely, Rajbir, he had fired shot on two persons, namely, Jaswinder Singh and his wife Sukhpal Kaur and thereafter, the revolver was snatched by Chamkaur Singh, who also fired on the chest of the aforesaid Sukhpal Kaur and thereafter, the revolver was

snatched by Balkaur Singh, who also fired shot on the chest of Sukhpal Kaur and consequently, both the persons unfortunately died.

Learned counsel for the petitioner has further submitted that so far as the present two petitioners are concerned, when the matter was being investigated, it was found that these two petitioners were not present at the time of the alleged occurrence and on the basis of plea of alibi they were exonerated and were put in column No.2 and no challan was presented against them. He also submitted that a fair investigation was conducted from where it was found that both the present petitioners were at Jaipur for their treatment in Sawai Man Singh Hospital, Jaipur and they stayed at a hotel regarding which a detailed record of the hotel and the CCTV footage have also been taken by the police and after in depth investigation, the present petitioners were exonerated.

Learned counsel for the petitioner has also submitted that thereafter, the complainant was examined and he has deposed as PW-1 and the allegations were in verbatim as that of the FIR and on the basis of the aforesaid deposition, the prosecution moved an application under Section 319 of the Cr.P.C. for summoning of the present petitioners as additional accused. Learned counsel while referring to the impugned order passed by the learned Sessions Judge, Sri Muktsar Sahib has submitted that the summoning orders have been issued without application of mind and contrary to the law laid down by the Hon'ble Supreme Court in “**Hardeep Singh Vs. State of Punjab and others**” 2014(3) SCC 92. He submitted that it has been so held in the aforesaid judgment that degree and standard for summoning an additional accused is strict and due diligence, care and caution has to be exercised while summoning a person as an additional accused in an application under Section

319 Cr.P.C. and in case summoning order has to be issued then it has to be bagged by strong and cogent reasons for the same. He further submitted that a perusal of the impugned order would show that it has only been observed by the learned Sessions Judge in the operative part of the order that at this stage there is a deposition of the complainant assigning a specific role and part played by the present petitioners in the commission of offence and while whatever proof is collected during investigation by the police with regard to their absence from the occurrence could be a defence which is yet to face scrutiny of the Court during trial. He also submitted that the reasoning assigned by the learned Sessions Judge was not only erroneous and perverse but it was also contrary to the law laid down by the Hon'ble Supreme Court in Hardeep Singh's Case (supra). He further submitted that the investigation report qua the petitioners especially with regard to plea of alibi has to be considered in proper perspective so as to exercise due care and caution while considering the summoning of the petitioners as additional accused and merely on the basis of the statement of the complainant by assigning of specific role does not *ipso facto* or *ipso jure* become a ground for summoning under Section 319 Cr.P.C. He also submitted that the entire totality of circumstances has to be seen for arriving at a just conclusion which has not been done in this case.

On the other hand, Mr. Amit Rana, learned Senior Deputy Advocate General, Punjab, has stated a perusal of the impugned order would show that the summoning orders have been passed on the basis of the allegations made by the complainant with regard to the specific role of the petitioners only and it is correct that the investigation was conducted in depth

and the petitioners were exonerated on the basis of the plea of alibi as well.

Mr. Surinder Garg, learned counsel for respondent No.2 has stated that the summoning orders have been correctly passed since it was a case of double murder and as per the FIR and the statement made by the complainant the petitioners were rightly summoned by the learned trial Court.

I have heard the learned counsel for the parties.

The present petitioners were summoned under Section 319 of the Code of Criminal Procedure and as per the learned counsel for the parties, they were earlier exonerated by the police after in depth investigation whereby on the basis of plea of alibi they were exonerated and put in column No.2 and therefore, no challan was presented against them. A perusal of the impugned order would show that although the aforesaid judgment of Hon'ble Supreme Court in *Hardeep Singh's Case (supra)* was referred but the law laid down by the Hon'ble Supreme Court has not been followed in true perspective in the present case by the learned Sessions Judge while passing the impugned order. The relevant para of the aforesaid judgment is reproduced as under:-

“105. Power under Section 319 CrPC 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.”

Whenever, a person is to be summoned as an additional accused

then it has to be bagged by strong and cogent reasons. However, perusal of the impugned order would show that no proper reason has been assigned and it has been so observed that evidence which has come up till now which is more than *prima facie* evidence and sufficient for summoning the petitioners as additional accused. However, the evidence with regard to the investigation of the police pertaining to plea of alibi was not considered and taken into consideration and in fact the entire totality has to be seen before arriving at a conclusion as to whether a person is to be summoned as an additional accused or not.

A query was raised to the learned State counsel as to whether he has any objection in case the impugned order is set aside and the matter is remanded back to the learned Sessions Judge particularly in view of the fact that qua the petitioners the proceedings have been stayed by this Court, he stated that he has no objection in case the matter is remanded back so that a fresh order can be passed in the light of the law laid down by the Hon'ble Supreme Court in *Hardeep Singh's case (supra)*.

Therefore, in view of the aforesaid facts and circumstances, this Court deems it fit and proper to set aside the order passed by the learned Sessions Judge, Sri Muktsar Sahib dated 07.10.2021 and the learned Sessions Judge, Sri Muktsar Sahib is directed to pass a fresh order on the application moved by the prosecution under Section 319 Cr.P.C. in the light of law laid down by the Hon'ble Supreme Court in *Hardeep Singh's Case (supra)*. The fresh order shall be passed as expeditiously as possible and in accordance with law. It is made clear that while passing the fresh order the learned Sessions Court would not be influenced by any observation made in the earlier order

passed on 07.10.2022 and the orders passed by this Court in the present case.

The present petition stands allowed.

15.11.2022

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |