

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

CRR-2048-2022

Date of decision : 28.09.2022

Jagmal

.....Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. B.S. Mittal, Advocate
for the petitioner.

RAJESH BHARDWAJ, J. (Oral)

Petitioner has approached this Court impugning the order dated 17.09.2022 wherein the petition filed by the petitioner under Section 319 Cr.P.C. has been declined.

As per the facts of the case, the FIR in this case was lodged by Jagmal Singh. The sum and substance of the allegations made by the complainant-petitioner were that his marriage was solemnized 28 years ago. Out of the wedlock, he was blessed with two sons and two daughters. He has constructed a shop at home where his wife Poonam (deceased) used to sell the wood. Rakam Singh, who is their neighbour also had the shop of wood and as both were carrying out same type of business, there was a rivalry between both the families. Rakam Singh, his wife and his sons namely, Sachin and Monu quaralled with them in which they were beaten by Rakam Singh and his family. As the matter was reported to the police, Rakam Singh and his family had assaulted and beaten his wife Poonam and she was threatened to be killed, on account of which, his wife was seriously disturbed. Resultantly, his wife jumped before the train and committed suicide. It was alleged that his wife was harassed by

Rakam Singh, his wife Babli and sons Mohan and Sachin and hence, she committed suicide. A request was made to take legal action against all the accused. On registration of the FIR, investigation commenced and during investigation, the investigating agency filed the challan qua Rakam Singh. However, the allegations against wife of Rakam Singh and both the sons were not substantiated and hence, they were kept in Column No.2. During trial, the complainant appeared before the trial Court and reiterated his allegations on the basis of which, the application under Section 319 Cr.P.C. was filed for summoning respondents No.3 to 5. However, learned trial Court declined the same vide impugned order dated 17.09.2022. Aggrieved by the same, the petitioner is before this Court by way of the present petition.

Learned counsel for the petitioner has vehemently contended that the complainant had lodged the FIR wherein all the four accused were specifically named as the accused Rakam Singh and his family used to quarrel with the family of the deceased and she always used to remain in depression. She was beaten by Rakam Singh and his family members i.e. private respondents, on account of which, she jumped before the train and committed suicide. He has submitted that the investigating agencies did not investigate the case in free and fair manner and thus, illegally declared them innocent during the investigation. He has submitted that PW-1 namely, Rohini deposed specifically that Rakam Singh and his family members i.e. respondents had given beating to the deceased and she was threatened to vacate the plot, otherwise, they would send her husband and her sons behind bars. On the basis of the substantial deposition of PW-1, application under Section 319 Cr.P.C. was filed

which has been illegally declined by the trial Court without adverting the evidence on record. He has submitted that PW-1 is the eye-witness who gave ocular account of the occurrence before the trial Court, however, the trial Court failed to appreciate the same and thus, drawn a wrong conclusion in declining the same. He submits that the impugned order deserves to be *set aside* and the application filed under Section 319 Cr.P.C. be allowed.

Heard. Evidently, both the parties are neighbours and from the facts and circumstances of the case, it is apparent that there are dispute between both the parties since long. On perusal of the record, it is apparent that Rakam Singh had got challaned the complainant and his family members under Sections 107/151 Cr.P.C and the petitioner had also filed a case against them in the Court. On registration of the FIR, a thorough investigation was carried out and on the conclusion of the same, all three respondents i.e respondents No.3 to 5 were declared innocent. For appreciation of application under Section 319 Cr.P.C., the statutory provisions of Section 319 Cr.P.C. reads as under:-

“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 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 Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab and others, 2014(1) RCR (Criminal) 623** has held 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.

It has been held by the Hon'ble Supreme Court that summoning under Section 319 Cr.P.C. is an extraordinary power which cannot be used in a cavalier manner and the same has to be used sparingly. Applying the law settled to the facts and circumstances of the case, it is apparent that the prosecution failed to bring any new evidence which is sufficient enough for drawing a satisfaction more than required at the time of framing of charge.

Thus, weighing the facts and circumstances of the case on the anvil of the law settled by the Hon'ble Supreme Court in Hardeep Singh case (supra), this Court finds that the view taken by the learned trial Court suffers from no infirmity and hence, the petition being devoid of any merits is hereby dismissed.

28.09.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No