

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

**CRR-1658-2021 (O&M)
DECIDED ON: 31st MARCH, 2022**

SURJEET

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Nitin Kumar Sharma, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

The instant revision petition is filed being aggrieved of order dated 30th July, 2021 passed by the Additional Sessions Judge, Yamuna Nagar at Jagadhri whereby, an application under Section 319 of Code of Criminal Procedure, 1973 moved by the petitioner/complainant seeking summoning of Randeep and Harshit (respondents No.2 and 3) as additional accused was dismissed.

The facts in brief are that an FIR No. 30, dated 18th March, 2019, under Sections 323, 324, 506 read with Section 34 of the Indian Penal Code, 1860 and Sections 3 of SC and ST Act was registered at Police Station Buria, District Yamuna Nagar at the behest of Surjeet. It was stated that he was going to answer the call of nature and while passing through the 'dol' of the fields of Randeep, he abused the complainant in the name of his caste and when he

objected, Randeep inflicted 'danda' blow on his left eye. Further, Munish, who was harvesting 'barseen' in the nearby fields, also caused injuries to him with a 'darati' on the lower side of his left eye and Harshit inflicted 'danda' blow on the left side of his eye. When he raised alarm, then, his brother-in-law Amit Kumar and Aunt (bua) Raj Kumari got attracted to the place of occurrence. On seeing them the assailants fled away from the spot along with their respective weapons.

Learned counsel for the petitioner contends that the impugned order suffers from illegality and perversity in as much as the trial Court while passing the impugned order has side tracked the oral as well as documentary evidence. It is argued that the respondents No.2 and 3 have been specifically named in the FIR. It is also urged that the petitioner/complainant while, appearing in the witness box as PW-3 has again reiterated the sequence of occurrence and role of respondents No.2 and 3. Learned counsel for the petitioner further submits that the petitioner/complainant has fully corroborated in his statement as well as the version of the FIR.

Heard.

It is apparent that scrutiny of record and after considering the submission, the allegations made by the complainant were duly investigated and during investigation respondents No.2 and 3 were found to be innocent and no challan has been presented against them. No specific injury has been attributed to both of them, i.e., respondents No.2 and 3. As per the CDR of mobile phone of respondent No.3, the location of complainant was not found to be at the place of occurrence, rather it shows him at the place of his employment at the time and day of occurrence. Even after recording of examination-in-chief of the petitioner/complainant, no incriminating evidence

has come on record against the respondents No.2 and 3 and the complainant is yet to be examined during cross-examination.

A Constitution Bench of Hon'ble Supreme Court in **Hardeep Singh v. State of Punjab and Others (2014) 3 SCC 92**, while discussing the scope of section 319 Cr.P.C. held as follows:

105. 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.

106. 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.”

In another recent judgment, delivered on 17.09.2021 in **Ramesh Chandra Srivastava vs. State of U.P.**, (Criminal Appeal No. 990 of 2021) the Hon'ble Supreme Court while relying upon *Hardeep Singh's* case (supra), reiterated the legal position as regards summoning under section 319 Cr.P.C. in the following words:

“The test as laid down by the Constitution Bench of this Court for invoking power under Section 319 Cr.P.C. inter-alia includes the principle that only when strong and cogent evidence occurs against a person from the evidence the power under Section 319 Cr.P.C. should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by this Court, is one which is more than prima facie case which is applied at the time of framing of charges.”

The evidence as has been led in the instant case before the trial Court is nothing more than the self serving statement of the petitioner/complainant which is absolutely same as has been stated in the FIR which is vague and general in nature without there being any specific attribution.

As discussed above, the investigating agency had found some incriminating evidence against Manish Kamboj who was challaned, however, no such evidence was found against respondents No.2 and 3.

In view of the afore-stated facts and circumstances the impugned order is well reasoned and there is infirmity, perversity or illegality as the petitioner has failed to bring the instant case within the ambit of test to be

barred i.e., it should be more than a prima-facie case supported with strong and

cogent evidence.

Hence, the revision fails being devoid of merits and order dated 30th July, 2021 is upheld.

Accordingly, the present petition stands dismissed.

MARCH 31st, 2022
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(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>