

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

CRR-352-2023

Date of Decision: 27.03.2023

Dheera Ram

..... Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Chand Ram Olla, Advocate, for the petitioner.

Rajesh Bhardwaj, J.

Petitioner has approached this Court by way of filing the present revision petition impugning order dated 19.12.2022, passed by the learned Addl. Sessions Judge, Hisar whereby, application filed by the petitioner under Section 319 Cr.P.C. for summoning respondents No.2 and 3 as additional accused in case FIR No.177, dated 12.07.2020, registered under Sections 147, 148, 149, 302, 323, 365, 452, 325 IPC, Section 3(i)(r), (s), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, at Police Station Agroha, District Hisar, was dismissed.

Adumbrated facts of the case are that statement of Dheera Ram, complainant was recorded, wherein, he has deposed that on 11.07.2020 at about 4:00 pm, when he was near the house of Sarpanch of village Mothsara, then Anmol son of Parveen and Pawan son of Bajrang came on motorcycle and started abusing him. He was given slaps and fists blows by them. On seeing the neighbours both of them escaped from there on their motorcycle. Thereafter, at 5:30 p.m., Anmol son of Parveen, Rahul son of Dharampal, Rakesh (respondent No.2) and Sunder sons Jaina Ram Nai, Vishnu son of Om Parkash, Wazir son of Balwant, Sonu, Pawan and

Surender @ Kalu (respondent No.3) sons of Bajrang came armed with lathi, danda and iron rods and forcibly entered into their house. They abused him and they were dragged out of the house. The accused persons opened attacked with their respective weapons. The female members of the family came to their rescue, however, they were also beaten up by the accused. In the meantime, his cousin Pardeep and Kuldeep came there and on seeing them, the accused ran away from the spot. He alleged that the complainant raised voice against the accused, who used to consume liquor at the chowk of the village. The accused nurtured a grudge against the complainant and hence, due to his motive, to take revenge from the complainant and his family members, the accused opened an attack on them. The injured were shifted to the hospital, where, Ferozi succumbed to the injuries. The FIR was lodged and request was made to take legal action against the accused. After registration of the FIR, the investigation commenced and the Investigating Agency after investigation filed challan under Section 173(2) Cr.P.C. against the accused, namely, Anmol, Sonu, Wazir Singh, Pawan, Rahul @ Sukha, Sunder @ Binda and Vishnu. However, accused Rakesh and Surender (respondents No.2 and 3) were found innocent and they were kept in column No.2. The trial commenced qua rest of the accused. During the trial, complainant- Dheera Ram examined as PW-1 and he reiterated his allegations as made by him at the time of registration of the FIR. Thus, application under Section 319 Cr.P.C. was filed praying for summoning of respondent No.2 and 3 i.e. Rakesh and Surender. The trial Court after hearing both the sides declined the same vide impugned order dated 19.12.2022. Aggrieved by the same, the petitioner has approached this Court by way of filing the present revision petition for setting aside the

impugned order and summoning respondents No.2 and 3 to face the trial alongwith the co-accused.

Learned counsel for the petitioner has vehemently contended that the view taken by the learned trial Court in declining the application filed under Section 319 Cr.P.C. is totally unsustainable in the eyes of law. He submits that the complainant is injured eye witness and he had specifically named both respondents No.2 and 3 as accused who alongwith the rest of the accused had entered into the house of the complainant duly armed with weapons and gave beating to the complainant side. He has submitted that the investigation was not carried out in a free and fair manner, thus, respondents No.2 and 3 were declared innocent by the Investigating Agency without any substantial reason. He submits that deposition of the complainant-petitioner being eye witness could not be ignored and thus, there was no reason for ignoring his evidence, but respondents No.2 and 3 have been declared innocent. He submits that the learned trial Court has failed to appreciate the same and the view taken by it is against the law settled and thus, deserves to be set aside.

Heard learned counsel for the petitioner and perused the record.

On perusal of the record, it is apparent that the alleged occurrence had taken place on 11.07.2020 at about 4:00 p.m. Statement of the complainant was recorded by the Investigating Agency on 12.07.2020. There is no gainsaying that the complainant has named both respondents No.2 and 3 alongwith co-accused, who came duly armed and caused injuries to the complainant side. The injured were shifted to the hospital and the brother of the complainant, namely, Ferozi succumbed to the injuries caused by the accused. After investigation, the Investigating Agency did not find any

substantial evidence against both respondents No.2 and 3 and hence, they were kept in column No.2. However, challan was submitted against rest of the accused. It is apparent from the record that the Investigating Agency carried out a polygraph test regarding both respondents No.2 and 3 but no material evidence was found regarding the complicity of both respondents No.2 and 3 as alleged. Besides this call details of both respondents No.2 and 3 were also investigated to verify their presence at the time of occurrence, but that also did not substantiate the allegations levelled against both respondents No.2 and 3. Thus, it is evident from the record that the Investigating Agency has examined the allegations levelled by the complainant-petitioner from all the possible angles but the same were not substantiated after the investigation and hence, respondents No.2 and 3 were declared innocent.

To understand the controversy in the case, statutory provisions of Section 319 Cr.P.C. is necessary to be considered, which is reproduced as under:-

“Section 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 sub-section (1), then-
(a) the proceedings in respect of such person shall be commenced a fresh, and the 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 Constitution Bench of Hon'ble Supreme Court in Hardeep Singh vs. State of Punjab and others, (2014) 3 SCC 92 has held that the satisfaction of the Court against the proposed accused for summoning him/her to face the trial should be more than required at the time of framing of charge. Relevant paras of the same are reproduced as under:-

“98. Power under [Section 319](#) Cr.P.C. is a discretionary and an extra- ordinary 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 unrebutted, 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.”

From facts and circumstances of the present case when weighing on the anvil of the law settled, it is apparent that there was no material before the trial Court, which could be termed as sufficient or more than *prima facie* case made out for framing of charge. Hon'ble Supreme Court has held that the Court should refrain from exercising its power under Section 319 Cr.P.C. in a mechanical manner. It has been held that power under Section 319 Cr.P.C. should be used sparingly in exceptional circumstances.

Weighing the facts and circumstances of the present case on the anvil of law settled by the Hon'ble Supreme Court, this Court is of the opinion that the trial Court has rightly declined the application for summoning the respondents-accused, as it would be nothing but a futile exercise and would defeat the ends of justice. Resultantly, the present petition is dismissed being devoid of any merit.

27.03.2023
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No