

CRR-262-2019

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

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**CRR-262-2019 (O & M)
Date of decision: 06.11.2023**

DHARAM RAJ AND ANOTHER ...Petitioners

Versus

STATE OF HARYANA AND ANOTHER ...Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Ajit Singh Lamba, Advocate,
for the petitioners.

Mr. Krishan Kumar Chahal, Addl. A. G. Haryana.

Mr. S.S.Mor, Advocate,
for respondent No.2.

RAJBIR SEHRAWAT, J. (Oral)

1. The present revision has been filed challenging the order dated 05.01.2019 passed by Additional Sessions Judge, Hisar, whereby an application under Section 319 Cr.P.C, filed by the prosecution, was allowed and the petitioners were summoned to face trial as additional accused alongwith accused already facing trial in FIR No.526 dated 27.06.2016, registered under Sections 307, 323, 148, 149, 325 and 285 IPC and Section 27 of the Arms Act, at Police Station Sadar Hisar.
2. The facts involved in the present case are that respondent No.2 had lodged complaint against the petitioners and other co-accused alleging therein that Ranbir and Santro from the side of respondent No.2, were injured by the side of the petitioners. During the investigation, the police had not found sufficient material against the petitioners to file a challan

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against them. The complainant appeared before the trial Court as PW 1 and reiterated his statement made before the police that the petitioners were also involved in the incident. After making the statement, the complainant had filed an application under Section 319 Cr.P.C., for summoning the petitioners as additional accused to face the trial in the matter. The said application has been allowed by the trial Court. Hence, the present revision has been filed.

3. Before proceeding further, it is apposite to notice that in the interregnum, petitioner No.1 has since expired. Therefore, the present petition survives only regarding petitioner No.2-Simans @ Simanth.

4. While arguing the case, counsel for petitioner No.2 has submitted that the police had thoroughly investigated the matter and it was found by them that the story of the complainant was only partly correct and that he had named certain persons wrongly. Accordingly, one Suresh was added as accused, who was driving the car in question and qua petitioner No.2, the police had not found any material. Even before the trial Court, while appearing as a witness, the complainant has not made any serious or specific allegations against petitioner No.2. Therefore, the summoning order passed by the trial Court is not in conformity with the criteria laid down by Hon'ble the Supreme Court in **Hardeep Singh Vs. State of Punjab and others**, 2014(1) R.C.R. (Criminal) 623.

5. Even as per the statement made by the complainant before the trial Court, the only allegation against petitioner No.2 is that he was also sitting in the car, when the persons from the side of the complainant were being run over by this car. Beyond that, there is no allegation against

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petitioner No.2. It is not even the allegation that petitioner No.2 was driving the car and he had run over the persons from the side of the complainant. Hence, the impugned order passed by the trial Court deserves to be set aside qua petitioner No.2.

6. On the other hand, counsel for the State, being instructed by SI Mahender Singh, and being assisted by counsel for respondent No.2, has submitted that name of petitioner No.2 was specifically mentioned in the FIR. However, the police had wrongly not filed the challan against the petitioners. Therefore, while appearing as a witness before the Court, the complainant had again reiterated the version made before the police. The trial Court has found sufficient substance in the statement made by the complainant and has arrived at a conclusion that the petitioners deserve to be summoned as additional accused. The trial Court has not committed any illegality or perversity while passing the impugned order.

7. Having heard counsel for the parties and having perused the record, this Court finds that as per the story of the prosecution, even if taken on its face value, there could be some substance in the allegations qua petitioner No.1-Dharam Raj. However, he has since expired, therefore, qua him, the entire matter has become infructuous.

8. So far as petitioner No.2 is concerned, even as per the statement made by the complainant before the Court, there is no specific allegation against him, except deposing in the statement that the petitioner No.2 was also sitting in the car; which was being driven by some other person; at the time of the incident. In the considered opinion of this Court, this allegation and the statement made by the complainant before the Court,

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would not satisfy the test laid down by the Hon'ble Supreme Court in Hardeep Singh's case (supra), according to which the evidence must be of such degree which is more than disclosing prima facie case but may be less than sufficient to ensure conviction. In the present case, even if this allegation is taken as correct, this does not show the probability of petitioner No.2-Simans @ Simanth being convicted, *per se*. Needless to say that criteria for summoning a person as an additional accused to face the trial with other accused, is higher than the criteria required by the police to file a challan. In the present case, the allegations against petitioner No.2, even if taken on their face value, would not be sufficient to summon him as an additional accused.

9. In view of the above, the present revision is allowed qua petitioner No.2-Simans @ Simanth; and the impugned order dated 05.01.2019 passed by Additional Sessions Judge, Hisar, is set aside and the application under Section 319 Cr.P.C., filed by the prosecution, is dismissed qua petitioner No.2.

06.11.2023
parveen kumar

(RAJBIR SEHRAWAT)
JUDGE

Whether reasoned/speaking?	Yes/No
Whether reportable?	Yes/No