

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

CRR-616-2023 (O&M)

Date of decision : 15.03.2023

Adrish Mohammad

.....Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Inderjeet Singh, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

CRM-10587-2023

Applicant/petitioner has filed this application for the delay of 128 days in filing the revision.

It has been contended that applicant/petitioner has approached this Court after delay of 128 days due to financial constraints. He has submitted that the delay occurred is totally *bona fide* and unintentional. He has further submitted that the revision is likely to succeed and applicant would suffer irreparable loss and injury if the delay is not condoned.

After hearing counsel for the parties and perusing the record, the Court is of the opinion that the delay occurred deserves to be condoned. Accordingly, delay of 128 days in filing the revision is condoned. Application stands allowed.

CRR-616-2023 (O&M)

This revision petition has been filed impugning the order dated 28th July, 2022 wherein the application under Section 319 Cr.P.C.

filed by the petitioner-complainant for summoning the proposed accused namely, Salim, Ali Hassan and Aslam i.e. respondents No.2 to 4 have been declined by the trial Court.

As per facts of the case, FIR was registered on the statement of petitioner-complainant. It was alleged that he got married but after his marriage, there arose a dispute between him and his wife and on account of the same, there remained matrimonial discord. His wife and his in-laws used to abuse him. On 05.06.2019 on the eve of Eid when he was lying in the room and his wife and children were also at home, his father-in-law Moldeen, Saleem, Alihasan and Mushtak sons of Moldeen who are his brothers-in-law came there and started beating him. He was beaten by them with dandas and given the fist and kick blows. Somehow, he could save himself by running outside and thereafter, his family members took him to Sadhaura Hospital but as the doctor was not available there, he was referred to Government Hospital, Jagadhari from where he was referred to PGI, Chandigarh. It was alleged that his father-in-law Moldeen, Saleem, Ali Hassan, Aslam, Mushtak had beaten him without any reason and by forcibly entering the house and hence, request was made that legal action be taken against them. On registration of the FIR, investigation commenced and after investigation, police found respondents No.2 to 4 i.e. Salim, Ali Hassan and Aslam to be innocent. However, the allegations made against accused Moldeen and Mushtak were substantiated and thus, the challan was presented against them. On presentation of the challan, learned trial Court framed the charges and the petitioner was examined as PW-1. He reiterated his allegations as made in the FIR and thereafter, after his examination-in-chief, application under Section 319

Cr.P.C. was filed praying for summoning respondents No.2 to 4. However, learned trial Court after hearing both the sides, declined the same vide impugned order dated 28.07.2022. Aggrieved by the same, petitioner is before this Court praying for setting aside the said impugned order.

Learned counsel for the petitioner has vehemently contended that the view taken by learned trial Court is totally against the facts and circumstances of the case. He submits that all the three proposed accused respondents No.2 to 4 were specifically named by the petitioner in the FIR. However, the police did not investigate the case fairly and thus, declared them innocent on the basis of tainted investigation carried out. He further submits that all the accused gave beating to the petitioner and from the medical evidence produced, the allegations made are corroborated but learned trial Court has failed to appreciate the same. He has submitted that the view taken by learned trial Court that no particular or specific role has been attributed to the assailants and thus, they cannot be summoned under Section 319 Cr.P.C., is totally against the law settled. He has relied upon the judgments titled as Sartaj Singh Vs. State of Haryana and another (CRA No.298-299 of 2021 decided on 15.03.2021), Harshdeep Singh and others Vs. State of Haryana and another (CRR-2269-2019 (O&M) decided on 16.09.2022) and Ramesh Chand Vs. State of Haryana and another (CRR-1592-2021 decided on 03.03.2023) and submits that the Hon'ble Supreme Court in Sartaj Singh's case (supra) has held that the accused can be summoned on the basis of even examination-in-chief and Court need not wait till the cross-examination. He further submits that the petitioner is the victim in the case and has deposed regarding the complicity of the respondents and

thus, they are liable to be summoned under Section 319 Cr.P.C. He submits that the view taken by the trial Court is against the law settled and thus, the impugned order deserves to be *set aside*.

Heard. After hearing counsel for the petitioner and perusing the record, it is apparent that the dispute in question is matrimonial in nature. Petitioner has a dispute with his wife and the assailants in this case are his father-in-law and brothers-in-law. The petitioner made the allegations against his father-in-law and brothers-in-law. After a thorough investigation, the allegations were found substantiated *qua* two of the accused i.e. Moldeen and Mushtak who are father-in-law and brother-in-law of the petitioner. However, *qua* respondents No.2 to 4, the allegations were not found to have been substantiated and thus, they were kept in Column No.2. For appreciation of the controversy, the statutory provisions of Section 319 Cr.P.C. is required to be gone into which 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 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 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 all its humility, there is no dispute regarding the judgment relied upon by counsel for the petitioner. However, in the facts and circumstances of the same, the same are distinguishable. Hon'ble the Supreme Court in **Hardeep Singh's case (supra)** has held 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.

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.

15.03.2023
m. sharma

(**RAJESH BHARDWAJ**)
JUDGE

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