

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

CRM-M-10629-2020

Date of decision : 29.08.2023

RAKESH AND OTHERS

....Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Balkar Singh, Advocate
for the petitioners.

Mr. R.K. Ambavta, AAG, Haryana.

Mr. Ashish Gupta, Advocate and
Mr. G.S. Bidhan, Advocate for the respondents.

PANKAJ JAIN, J. (ORAL)

Present petition has been preferred under Section 482 Cr.P.C. impugning the order dated 20th of December, 2019 (Annexure P-1) passed by the Ld. Additional Sessions Judge, Rohtak whereby order dated 1st of April, 2019 (Annexure P-2) passed by Judicial Magistrate 1st Class, Rohtak has been set aside and application dated 22nd of May, 2017 (Annexure P-3) filed by the complainant for summoning the petitioners has been dismissed.

2. An FIR bearing No.537 dated 18th of August, 2015 registered for the offences punishable under Sections 148/149/323/325/427/506 IPC, at Police Station Rohtak Sadar, District Rohtak came into being wherein as many as 27 persons were named. While filing report under Section 173(2) Cr.P.C. the Prosecution Challaned 14 persons and rest of 13 persons

including the petitioners were placed in Column No.2. The complainant Dhirender appeared as PW-1 wherein he reiterated the version as given in the FIR and again named 27 persons specifying the role of the accused. Before completion of Examination-in-Chief an application under Section 319 Cr.P.C. was moved by the complainant seeking summoning of the persons placed in Column No.2 claiming that the evidence has come on record *qua* them. Trial Court dismissed the application vide impugned order dated 1st of April, 2019 observing as under:

“7. It may further be observed that against accused Rakesh, Sesha @ Suresh, Chattar, Pardeep, Suman, Vikas, Kapil and Nirmala, there is no specific attribution by any of the injured and eye-witnesses except the general allegations. The attribution made against Sheela, Nirmala and Poonam are also vague and not supported by medico-legal record. It can further be appreciated that the reckless manner in which the allegations are raised is reflected from the fact that the wife of Sunder has been named in FIR but the defence has stated that Sunder is unmarried. Accused Suresh is an army person and one of the accused is handicap. This shows that the allegations have been raised just to create pressure upon the opposite party and are not sincere in nature.

“8. It is emphasized in **Hardeep Singh Vs State of Punjab 2014(1) SCALE 241** that the primary object underline section 319 is that the whole case against all the accused should be tried and disposed off not only expeditiously but also simultaneously. It was held:

“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.”

It simply means that satisfaction by the Court has to be arrived at on the basis of evidence led during the trial. The degree of satisfaction as is required under section 319 of the Code is much higher than the test of prima-facie case being made out against the accused. The law points relied upon by the applicant/prosecution are mere the elaboration of already settled law and do not require reproduction by this court. No other point argued.

9. Therefore, in consonance with law aforementioned and in light of evidence discussed above no case is made out to summon Rakesh son of Rajbir, Sesha alias Suresh son of Om Parkash, Chattar son of Jai Kishan, Sheela wife of Rajesh, Nirmala wife of Dharambir, Pardeep son of Dharambir, Suman wife of Ravinder, Poonam wife of Suresh, Vikas son of Satyawar, Kapil son of Satyawar, Nirmala wife of Narender, all residents of Village Kahni, Tehsil & Distt. Rohtak as additional accused. Accordingly, present application is dismissed.”

3. In the revision preferred by the complainant the Revisional Court has set aside the aforesaid order and has summoned the petitioners to face trial after recording the following finding :

“13. In the present case, statement of complainant before the police which led to registration of FIR as well as his statement and statement of other injured persons made before the Court clearly show that accused persons namely Rakesh son of Rajbir, Sesha alias Suresh son of Om Parkash, Chattar son of Jai Kishan, Sheela wife of Rajesh, Nirmala wife of Dharambir, Pardeep son of Dharambir, Suman wife of Ravinder, Poonam wife of Suresh, Vikas son of Satyawar, Kapil son of Satyawar and Nirmala wife of

Narender were also involved in the commission of offence, though, their names were kept in column No.2 of the challan/final report after completion of investigation. Further, in the initial version, the complainant has mentioned twenty seven persons by name and two un-named persons with the allegations that they in connivance with each other and with their common intention have arrived at the spot and have inflicted injuries after dismantling the wall raised by him.

14. As a result of the discussion foregoing, the impugned order dated 1.4.2019 passed by the learned trial Magistrate is hereby set-aside while accepting the present revision. The accused persons namely Rakesh son of Rajbir, Sesha alias Suresh son of Om Parkash, Chattar son of Jai Kishan, Sheela wife of Rajesh, Nirmala wife of Dharambir, Pardeep son of Dharambir, Suman wife of Ravinder, Poonam wife of Suresh, Vikas son of Satyawar, Kapil son of Satyawar and Nirmala wife of Narender are ordered to be summoned under Section 319 Cr.P.C. as accused persons to face trial along with accused already facing trial. Lower Court record alongwith a copy of this judgment be sent back to the concerned Court. File after due compliance be consigned to the record-room.”

4. I have heard counsel for the parties and have gone through records of the case.

5. Counsel for the parties are not in position to dispute that in fact neither of the Courts has tested the evidence on record in the light of test laid down by Constitutional Bench of the Supreme Court in the case of **Hardeep Singh vs. State of Punjab (2014) 3 SCC 92**. Para Nos. 105 and 106 thereof read as under :

“105. In **Sohan Lal & Ors. v. State of Rajasthan, 1990(3) RCR (Criminal) 610 : (1990)4 SCC 580**, a two-Judge Bench of

this Court held that once an accused has been discharged, the procedure for enquiry envisaged under Section 398 Cr.P.C. cannot be circumvented by prescribing to procedure under Section 319 Cr.P.C.

106. In **Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors., 1983(1) RCR (Criminal) 73**, this Court held that if the prosecution can at any stage produce evidence which satisfies the court that those who have not been arraigned as accused or against whom proceedings have been quashed, have also committed the offence, the Court can take cognizance against them under Section 319 Cr.P.C. and try them along with the other accused.”

6. In view of aforesaid dictum of law laid down by the Constitutional Bench the Courts were definitely required to record a finding that the evidence on record does constitute more than a *prima facie* case which if goes un rebutted will lead to the conviction of the petitioners. Surprisingly though the Courts below have referred to the law laid down in Hardeep Singh's case (*supra*) but they failed to apply the said test.

7. In view thereof orders passed by both the Courts below are hereby set aside.

8. Trial Court is directed to decide the application filed by the complainant under Section 319 Cr.P.C. afresh strictly in accordance with law especially in the light of ratio laid down in Hardeep Singh's case (*supra*) as stated herein above.

9. Keeping in view that the present application is pending since

last four years, the Trial Court is directed to decide the same afresh preferably within a period of 30 days from the date of receipt of certified copy of this order.

10. The petition is allowed accordingly.

August 29, 2023	(Pankaj Jain)
Dpr	Judge

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