

2023:PHHC:089099
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 1614 of 2023
Date of decision : July 17, 2023

Simranjeet Kaur

..... Petitioner

Versus

U.T., Chandigarh and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present :-Mr. Prashant Bansal, Advocate
for the petitioner.

Mr. Abhinav Gupta, Addl. P.P. U.T.,Chandigarh.

PANKAJ JAIN, J. (ORAL)

1. Present revision petition has been preferred against the order dated 13.04.2023 passed by the trial Court whereby the application moved by the complainant under Section 319 Cr.P.C. for summoning one Jai Parkash Jain as additional accused stands dismissed.

2. The FIR came into being on the statement made by Simranjeet Kaur who is none else but the wife of the victim who alleged as under:-

“Statement of Simranjeet Kaur W/o Avtar Singh @ Sonu, R/O 231Ph-1 BDC Sec 26 Chd. Age 35 yrs Stated that I am residing at the above mentioned address with my family, I run a Cosmetic or Toys shop with my husband and for this we have taken Shop No. 184 Phase-1 BDC Sec 26 Chd on rent for the last six months. The said shop has taken on rent from Jain. Jai Kishan s/o Chet Parsad Booth No. 1 Phase-1 Market runs a toys shop near to usso because of business competition, Jai Kishan has been quarreling with my

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husband Avtar for the last many days by making excuses. Today Jai Kishan had told my husband Avtar that we should vacate Shop No.184 or else he will burn our shop. When my husband asked Jai Kishan for not speaking like this then Jai Kishan got angry and took out a knife from the pocket of his blue shorts and stabbed my husband Avtar under his left arm with the intention of killing him. When I tried to save my husband Avtar from Jai Kishan then Jai Kishan also stabbed me in the stomach with a knife and said that today I will end the story by killing both of you. Meanwhile, crowd gathered on the spot and my brother-in-law Kuldeep also came there and he took both of us in his car for treatment at GH 16 and we are under treatment there. Legal action should be taken against Jai Kishan s/o Chet Prasad r/o 188 Ph-1 BDC Sec 26 Chandigarh I recorded my statement to you and same is heard and admitted to be correct

Sd/- Simranjit Kaur”

3. The police after investigation filed report under Section 173 Cr.P.C. and challaned Jai Kishan the person who inflicted injuries. One Kuldeep Singh who claims to be an eye witness to the occurrence appeared as PW-2. Simranjeet Kaur the complainant has appeared as PW-3 and improved upon her initial version and claimed that all was being done at the instance of Jai Parkash Jain. It was for the aforesaid reason that the present application was moved but the same stands rejected by the trial court observing as under:-

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11. In view of the above-discussion and after careful perusal of the case file, this Court is of the considered opinion that there is no merit in the present application of the applicant/complainant. It has rightly

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been argued by the learned defence counsel that the applicant/complainant has tried to settle her score with the proposed accused as he wanted to get his shop vacated from the deceased. Now it is the intention of the applicant/complainant that by summoning him in the Court he should be pressurized to transfer that shop in the name of the applicant/complainant. Though there is no proof given on the record by the applicant/complainant that the application dated 02.09.2022 was moved by the applicant/complainant yet the version given therein does not repose any confidence. In this application, it is mentioned that while giving the knife blows to the deceased, the accused was repeatedly saying that he was killing them on the asking of Jai Parkash Jain. In the initial version the complainant had not named the proposed accused Jai Parkash Jain rather the version of the complaint is that due to business competition with the accused, the accused used to quarrel with the deceased on petty matters and on the day of occurrence also, he had asked her husband i.e. deceased Avtar Singh to vacate the shop otherwise he shall burn the shop. The version as deposed by the applicant/complainant as PW3 and the brother of the deceased PW2 Kuldeep Singh, is an improvement in the Court. Even during the course of investigation of the case, no role of any other person has been found by the Police. Even the alleged application to Senior Superintendent of Police, Chandigarh was moved after a long delay of more than one month. The other parts of depositions of the prosecution witnesses are not being commented upon at this stage lest it may prejudice the case of either side.

12. There is no dispute in respect of the proposition of the law as settled in the ruling Hardeep Singh (supra) yet the learned counsel

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for the applicant/complainant has referred to selected parts of this ruling. Otherwisethis is the celebrated ruling on the aspect and in this ruling, it has been held by the Hon'ble Supreme Court of India that more than prima facie case is to be there in case an additional accused is to be summoned. As per Section 319 of Cr.P.Cthe words for the proposed accused to be summoned have been used as he appears to have committed' Meaning thereby, chances of conviction of the proposed accused should be so high for summoning him as additional accused that if such evidence goes unrebutted there is every likelihood of his conviction. Here this court derives support from Sarabjit Singh and another Vs. State of Punjab and another, 2010(2) SCC, 141, wherein Hon'ble Supreme Court of India has held that power under Section 319 Cr.P.C. is an extraordinary power, which is required to be exercised sparingly and if compelling reasons exist for taking cognizance against persons against whom action has not been taken. Material brought before court must also be such which would satisfy court that it is one of those cases where its jurisdiction should be exercised. A higher standard for purpose of forming opinion to summon a person as additional accused is required to satisfy the ingredients thereof. An order under Section 319 should not be passed only because first informant or one of the witnesses seeks to implicate other persons. Sufficient and cogent reason are required to be assigned by court so as to satisfy ingredients of Section 319. Mere ipse dixit would not serve the purpose. Such evidence must be convincing, at least for purpose of exercise of the extraordinary jurisdiction. For the aforementioned purpose courts are required to apply stringent tests; one of the tests being whether evidence on

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record is such which would reasonably lead to conviction of the person sought to be summoned. Mere existence of a prima facie case may not serve the purpose.

13. Accordingly, this Court does not find any merit in the present application under Section 319 Cr.P.C moved by the applicant/complainant and the same is hereby dismissed”

4. Law regarding Section #19 Cr.P.C now stands settled in **Hardeep Singh v. State of Punjab and others 2014 (1) RCR (Criminal) 623** . Hon'ble Supreme Court in Hardeep Singh's case *ibid* has not only laid down the mandatory requirement for summoning a person as additional accused under Section [319](#) Cr.P.C., 1973 but has also flagged the necessary caution that needs to be exercised while resorting to power under Section 319 observing as under:

"98. Power under Section [319](#) Cr.P.C., 1973 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., 1973 In

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Section [319](#) Cr.P.C., 1973 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., 1973 to form any opinion as to the guilt of the accused."

5. On being asked as to what evidence has come on record that links the additional accused sought to be through by resorting to Section 319 Cr.P.C but for the improvement made by PW-3, counsel for the petitioner submits that after FIR was registered an application was moved on 02.09.2022 before the authorities but the authorities never bothered. However, he admits that in the initial version that is given in the FIR, the petitioner who is the eye witness never named Jai Parkash Jain.

6. In view of the above, this Court does not find any infirmity in the order passed by the trial court which will warrant interference by this Court in the revisional jurisdiction.

7. The revision petition stands dismissed.

**(PANKAJ JAIN)
JUDGE**

**July 17, 2023
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Whether speaking/reasoned	Yes
Whether Reportable :	No