

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

CRR No.2583 of 2023 (O&M)

Date of Decision:15.11.2023

Malkit Singh

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Parminder Singh-I, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner by way of instant petition has approached this Court praying for setting aside the order dated 18.09.2023 passed by the learned Additional Sessions Judge, Bathinda vide which the application filed by the petitioner herein under Section 319 Cr.P.C. for summoning respondent No.2 as an additional accused was dismissed.

2. In brief, the facts are that FIR No.0065 dated 27.06.2021 under Sections 458, 323, 34 IPC was registered at the instance of the petitioner-Malkit Singh wherein he alleged that on 24.06.2021 at about 10.30 PM, when petitioner and his mother were sleeping after taking meal, Harpreet Singh Harry and his brother Baljinder Singh alias Ladi sons of Davinder Singh alias D.C. and Davinder Singh alias D.C. son of Maghar Singh resident of Tammangarh entered his house after scaling common wall of his house. Harpreet Singh @ Harry was armed with an iron rod, his brother Baljinder Singh @ Ladi was armed with *kasia* and their father Davinder Singh @ DC was armed with a *dang*. Harpreet Singh @ Harry gave iron rod blow towards head of the petitioner, which hit on his right wrist as

he raised his arm to protect himself. Thereafter, all the three accused started beating him due to which he received grievous injuries on right leg, left ankle, left hand, chest and back. The petitioner raised alarm '*marta marta*' on which real elder brother of the petitioner came to the house of the petitioner having torch in his hand as there was a power cut. On seeing him, all the accused persons ran away with their respective weapons. Elder brother of the petitioner had arranged vehicle and admitted him at Civil Hospital, Rampura from where he was referred to Civil Hospital, Bathinda on 25.06.2021. It was also alleged that the accused persons inflicted injuries upon the petitioner due to an ongoing dispute between the petitioner and accused persons over a canal minor used for irrigating fields. However, after investigation, Baljinder Singh alias Ladi was kept in column No.2. The prosecution moved an application under Section 319 Cr.P.C. for summoning respondent No.2-Baljinder Singh alias Ladi as an additional accused, which was dismissed by the trial Court vide impugned order dated 18.09.2023 and aggrieved by the same, the petitioner has approached this Court by way of instant petition.

3. Learned counsel for the petitioner *inter alia* contends that on 27.06.2021, statement of the mother of the petitioner was recorded under Section 161 Cr.P.C. wherein she had also named Baljinder Singh and corroborated the version of FIR. In the supplementary statement of the petitioner recorded on 10.10.2021 under Section 161 Cr.P.C., he specified the role of each accused in inflicting injuries to the petitioner. Even in the statement of the petitioner recorded on 30.11.2022, he had specifically named Baljinder Singh alias Ladi. Moreover, the petitioner herein, who appeared in the witness box as PW-1, duly corroborated the version of the FIR as well as statement recorded under Section 161 Cr.P.C.

Therefore, the order passed by the learned trial Court dismissing the application

of the petitioner filed under Section 319 Cr.P.C. is erroneous and liable to be set aside.

4. Having heard learned counsel for the petitioner and after perusing the record of the case, this Court finds no ground to interfere with the order dated 18.09.2023 passed by the learned trial Court. In the enquiry conducted by DSP Maur, it was found that the accused-Baljinder Singh alias Ladi was not an aggressor rather he was trying to stop both the parties and based on the said enquiry, he was declared innocent and kept in column No.2. The petitioner appeared in the witness box as PW1 and improved his version, as originally in his statement he did not attribute any specific injury to the petitioner but in the statement recorded in Court he attributed two specific injuries to Baljinder Singh @ Ladi. Baljinder Singh @ Ladi was stated to be armed with *kasia* but in the MLR brought on record, injuries inflicted upon person of the petitioner were stated to be caused by a blunt weapon. Moreover, the said weapon i.e. *kasia* was not recovered during the course of investigation. Mere repetition of contents of FIR by the complainant in his statement recorded in Court would not be enough to summon a person/accused to face trial under Section 319 Cr.P.C. The existence of more than a prima facie case is *sine quo non* to summon an additional accused, which is absent in the present case. In the absence of any credible material available during the course of any inquiry into or trial of an offence, courts ought to refrain themselves from exercising its discretionary and extraordinary power under Section 319 Cr.P.C. The Constitution Bench of the Hon'ble Supreme of India in ***Hardeep Singh Vs. State of Punjab (2014) 3 SCC 92*** has held that the power under Section 319 Cr.P.C is a discretionary and an extraordinary power. It is to be exercised only on the basis of the material available before the Court during a trial and not because the

Magistrate or the Sessions Judge is of the opinion that some other accused/person may also be guilty of committing that offence.

5. The trial Court must evaluate the material against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible material, the power under Section 319 Cr.P.C. ought not to be invoked. A two Judge Bench of the Hon’ble Supreme Court in **Juhru and others Vs. Karim and another (2023) 5 SCC 406** speaking through Justice Surya Kant, while relying upon **Hardeep Singh’s case** (supra) has held as under:-

“16. It is, thus, manifested from a conjoint reading of the cited decision that power of summoning under Section 319 CrPC is not to be exercised routinely and the existence of more than prima facie case is sine qua non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 CrPC, and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 CrPC ought not to be invoked.

6. In view of the aforesaid facts and circumstances, this Court does not find any ground to interfere with the impugned order dated 18.09.2023 passed by the learned trial Court. Consequently, the instant petition stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

November 15, 2023
Pankaj*

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