

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

CRR No.2577 of 2023 (O&M)

Date of Decision:15.11.2023

Abdul Rahim

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sarfraj Anjum Mor, 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 05.09.2023 passed by the learned Additional Sessions Judge, Nuh vide which the application filed by the petitioner under Section 319 Cr.P.C. for summoning respondents No.2 to 7 as additional accused was dismissed.

2. In brief, the facts are that on 31.01.2018 at about 6 PM, daughter of the petitioner herein namely Anjula had gone to put fodder to animals where accused Saikul and Khalid abused her and Saikul also slapped her. After listening cries of her daughter, the petitioner reached at the spot and rescued her from the accused persons. The accused persons had beaten the petitioner as well. Thereafter, on 01.02.2018 at about 6.30/7.00 PM, the accused persons entered into the house of the petitioner with *lathis*, *dandas*, stones, iron rods and attacked the petitioner and his family members. Accused-Saikul hit iron rod on head of the petitioner, which caused fracture and accused Khalid gave a *lathi* blow on his ear. Accused Ibrahim hit on the finger of the petitioner with *lathi*; whereas accused Rustam hit on his leg and accused Jakir hit him on chest. Accused Noor Mohd. hit on the back of the petitioner and accused Tahir gave a *lathi* blow to

Mehmood son of Nijar Khan on his left hand. Accused Jaikam gave a *lathi* blow on wrist of Mehmood as well as on his back. Accused Rafik gave a *lathi* blow to Sher Mohd on his hand. Accused Ishak gave *lathi* blow to Rehmat son of Nijar Khan on his head. Accused Islam gave a *lathi* blow to Rehmat son of Nijar Khan on his shoulder and another blow on his legs. Accused Fajjar gave a *lathi* blow to Fatti son of Rehmat on his left leg and accused Iqbal gave a *lathi* blow to Jabir son of Abdul Rahim on his head. Accused Kamruddin and Israil gave enormous beatings to the petitioner and when the injured persons shouted for help, then Liyakat son of Yunis, Harun son of Rehmat resident of Rajoli came to their rescue, otherwise accused persons would have killed them. The accused persons threatened that today you have been saved but if got another chance, they would kill the petitioner and his family members. The accused persons with common intention attacked the petitioner and his family members as well as damaged household articles with *lathis*. On the basis of complaint made by the petitioner, the instant FIR No.53 dated 21.02.2018 under Sections 147, 148, 323, 325, 307 and 506 IPC read with Section 149 IPC was registered at Police Station, Ferozepur Zhirka.

3. Learned counsel for the petitioner *inter alia* contends that respondents No.2 to 7 have been specifically named in the FIR as well as statement recorded under Section 161 Cr.P.C. It is further contended that specific roles have been attributed to them in the FIR and despite the said fact, their names have been put in column No.2 by the police. 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.

3. 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 05.09.2023 passed by the learned trial Court. Admittedly, the quarrel between the complainant and accused persons had occurred on 31.01.2018 at 6.00 PM but the complainant did not make any complaint on that day itself. It was further alleged by the complainant that on the next day i.e. 01.02.2018, again accused persons beaten the complainant and his family members but still no complaint was made against the accused persons. Surprisingly, when the investigating officer visited General Hospital at Mandikhera on 01.02.2018, the injured and other persons present there gave a statement that they did not want to initiate any action against the accused persons at this stage and would complain later on. It was in this backdrop, the complaint was ultimately made on 20.02.2018 i.e. after a delay of 20 days. Names of respondents No.2 to 7 herein were put in column No.2 after conducting a thorough investigation, which was not challenged by the petitioner herein. The fracture injury in the head of the complainant which attracted Section 307 IPC had been attributed to one Saikul, who has already been challaned. The other accused namely Ibrahim, Tahir and Jaikam to whom other injuries were attributed are also challaned. 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 qua respondents No.2 to 7, who are sought to be summoned as additional accused. In the absence of any 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.

4. 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 evidence, 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.

5. In view of the aforesaid facts and circumstances, this Court does not find any ground to interfere with the impugned order dated 05.09.2023 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