

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

119. CRM-M No.3194 of 2024 (O&M)
Date of Decision:21.02.2024

Karamjit Singh ... Petitioner
Versus
State of Punjab and others ... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Achin Gupta, Advocate and
Mr. Karan Bansal, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. for quashing of the impugned order dated 23.11.2023 (Annexure P-3) passed by the learned Revisional Court whereby the revision petition filed by respondents No.2 and 3 has been allowed and the well reasoned order dated 08.05.2023 (Annexure P-2) passed by the learned Judicial Magistrate 1st Class, Faridkot summoning respondents No.2 and 3 as additional accused under Section 319 Cr.P.C. to face trial in FIR No.16 dated 05.02.2022 registered under Sections 452, 323, 148, 149 IPC (Sections 148, 149 IPC were deleted later on and Section 34 IPC was added) at Police Station, Sadar Kotkapura, District Faridkot, has been set aside.
2. In brief, the facts are that the FIR (supra) was registered by the petitioner against six accused namely Ravi, Jaspal Singh, Lovely, Raj Kumar and respondents No.2 and 3 herein, however, the investigating agency did not file final report under Section 173 Cr.P.C. against respondents No.2 and 3. Thereafter, petitioner was examined as PW2 and the prosecution filed an application under Section 319 Cr.P.C. for summoning respondents No.2 and 3 as

additional accused, which was allowed by the learned trial Court vide order dated 08.05.2023. However, in the revision petition preferred by respondents No.2 and 3 before the learned Sessions Court, Faridkot, the said order passed by the learned trial Court was set aside vide impugned order dated 08.05.2023 and the matter was remanded back to the learned trial Court for deciding the application under Section 319 Cr.P.C. afresh only after completing the examination of PW-1 and PW-2 including their cross-examination and after summoning the enquiry proceedings conducted by the DSP, Sub Division, Kotkapura. Aggrieved against the impugned order, the petitioner approached this Court by way of instant petition.

3. Learned counsel for the petitioner *inter alia* contends that the petitioners are aggrieved by the direction of the learned Revisional Court to decide application under Section 319 Cr.P.C. afresh only after the cross-examination of PW-1 and PW-2. The learned Revisional Court has relied upon the judgment of the Hon'ble Apex Court in ***Sarabjit Singh and another Vs. State of Punjab 2009 (3) RCR (Criminal) 388*** and observed that the evidence within the meaning of Section 319 Cr.P.C. contemplates evidence before the Court. It is further contended that the opinion of the learned Revisional Court is erroneous to the extent that only after the cross-examination of the witnesses, power under Section 319 Cr.P.C. can be exercised.

4. Per contra, learned State counsel submits that the learned Revisional Court has only remanded the case back to the learned trial Court to pass a fresh order and no prejudice has been caused to the petitioner.

5. Having heard learned counsel for the parties, this Court finds force in the arguments advanced by the counsel appearing for the petitioner. It is no longer *res integra* that power under Section 319 Cr.P.C. can be exercised on the

basis of examination-in-chief of the witnesses. The Constitutional Bench of the Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab (2014) 3 SCC 92*** had the occasion to examine the scope and ambit of power under Section 319 Cr.P.C. and the ratio of law as laid down in ***Mohd. Shafi Vs. Mohd. Rafiq (2007) 14 SCC 544*** was also discussed wherein it was construed that the trial Court has to wait till the cross-examination of the witnesses in order to exercise power under Section 319 Cr.P.C. While answering questions No.(ii) & (iii), the term used as evidence in Section 319 Cr.P.C. was explained and while answering question No.(ii) '*whether the word evidence used in Section 319 Cr.P.C. means examination-in-chief or also together with cross-examination*' it was categorically held by the Constitution Bench that the power under Section 319 Cr.P.C. can be exercised on the basis of the examination-in-chief of the witnesses. The same principle was reiterated by the Hon'ble Supreme Court in ***Sartaj Singh Vs. State of Haryana AIR 2021 SC 1513*** that the accused can be summoned on the basis of even examination-in-chief of the witness, as the Court need not to wait till his cross-examination.

6. In view of the above, the impugned order dated 23.11.2023 is set aside and the Revisional Court is directed to pass fresh orders in the light of the ratio of law laid down by the Hon'ble Supreme Court in ***Hardeep Singh's case*** and ***Sartaj Singh's case (supra)***. However, the Revisional Court would be at liberty to summon the enquiry proceedings conducted by DSP vide which the accused were declared innocent in order to test the factual matrix whether it satisfies the principle of more than *prima facie* case as culled out in ***Hardeep Singh's case (supra)***.

7. The Hon'ble Supreme Court in ***Brijendra Singh Vs. State of Rajasthan 2017 (3) RCR (Criminal) 374*** has held that the Court is duty bound to

examine evidence collected during enquiry for declaring the accused as innocent for the purpose of invoking power under Section 319 Cr.P.C.

8. The instant petition stands disposed of in above terms.

(HARPREET SINGH BRAR)
JUDGE

February 21, 2024
Pankaj*

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