



207

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-172-2024
DECIDED ON: 21.11.2024

JASBIR SINGH

.....PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Pratap Singh, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

1. The present revision petition has been directed against the impugned order dated 29.11.2023 passed by Additional Sessions Judge, Karnal wherein the application moved by the complainant/respondent No.2 under Section 319 Cr.P.C., for summoning the petitioner to face trial in FIR No.412 dated 05.12.2021, registered under Sections 302 and 34 IPC (Section 34 IPC was deleted later on), registered at Police Station Bhutana, District Karnal, Haryana has been allowed.
2. Learned counsel for the petitioner contends that the order passed by the trial Court below is liable to be set aside as no overt act has been attributed to the present petitioner in the FIR and moreover, the petitioner was declared innocent by the investigating agency and was therefore, kept in column No.2. He further submits that final report was presented only against one accused person namely Om

Parkash who has stated in his disclosure statement that the petitioner has nothing to do with the alleged incident.

3. It is further asserted on behalf of the petitioner that there is a delay of 08 days in lodging the instant FIR as the alleged occurrence took place on 27.11.2021 whereas the present FIR stands registered on 05.12.2021. Moreover, he submits that the present petitioner is an old age respectable man (71 years) and has no connection with the alleged murder and has been falsely implicated just to grab the money from the petitioner's family as the deceased had come to his shop one day prior to his death wherein the deceased got into quarrel with the main accused namely Om Parkash who inflicted injuries on the person of the deceased which proved fatal leading to the death of the deceased.

4. In support of his argument, he has placed reliance upon a judgment passed by the Apex Court in ***Naveen vs. State of Haryana & Ors, 2022 (4) R.C.R., (Crl.) 953***, wherein it has been held that power under Section 319 Cr.P.C., is a discretionary and extraordinary, which should be exercised sparingly and cautiously only in the cases where circumstances of the case so warrant and crucial test has to be applied is one which is more than prima facie case as exercised at the time of framing of charges, but short of satisfaction to extent that evidence, if goes un rebutted, would lead to conviction.

5. Heard, learned counsel for the respective parties.

6. Before proceeding with the matter, it is apposite to reproduce what has been contemplated in Section 319 CrPC, which reads as under:-

"...Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the Accused has committed any offence for which such person could be tried together with the Accused, the Court may proceed against such person for the offence which he appears to have committed."

7. The Constitution Bench of the Supreme Court in “**Hardeep Singh vs. State of Punjab**”, (2014) 3 SCC 92, while illuminating the scope of Section 319 Cr.PC, laid down that:-

“57. Thus, the application of the provisions of Section 319 CrPC, at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 CrPC can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to herein above, adding a person as an accused, whose name has been mentioned in Column 2 of the chargesheet or any other person who might be an accomplice.” xxxx xxxx xxxx

“105. Power under Section 319 CrPC is a discretionary and an extraordinary 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.

106. 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 un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under [Section 319](#) CrPC. In [Section 319](#) CrPC 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](#) CrPC to form any opinion as to the guilt of the accused.”

8. In Hardeep Singh’s case (supra), the Supreme Court eloquently held that the word “evidence” in [Section 319](#) CrPC has to be broadly understood and thus materials which have come before the Court, in course of enquiry, can be used for (i) corroboration of evidence recorded by Court after commencement of trial; (ii) for exercise of power under [Section 319](#) Cr.P.C.; and (iii) also to add an accused whose name is shown in column no.2 of the chargesheet.

9. In “[Sukhpal Singh Khaira vs. The State of Punjab](#)”, (2023) 1 SCC 289, the Supreme Court succinctly explained the powers bestowed on the Court under Section 319 CrPC and ruled that:-

“15. At the outset, having noted the provision, it is amply clear that the power bestowed on the Court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the Court, if it appears to the Court that such evidence points to any person other than the accused who are being tried before the Court to have committed any offence and such accused has been excluded in the charge sheet or in the process of trial till such time could still be summoned and tried together with the accused for the offence which appears to have been committed by such persons summoned as additional accused.”

10. The Constitution Bench refreshed the guidelines which, the competent court, must follow while exercising powers under [Section 319](#) CrPC and further ruled that:-

(i) if the competent court finds evidence or if application under [Section 319](#) Cr.P.C. is filed, regarding involvement of any other person in committing the offence based on evidence “recorded at any stage in the trial” before passing of the order on acquittal or sentence, it shall

pause the trial at that stage and the Court shall proceed to decide the fate of the application under [Section 319](#) Cr.P.C.;

(ii) if the Court decides to summon an accused under Section 319 Cr.P.C., such summoning order shall be passed before proceeding further with the trial in the main case and depending upon the stage at which the order is passed, the Trial Court shall apply its mind to the fact as to whether such summoned accused is to be tried along with other accused or separately; and

(iii) if the power under [Section 319](#) Cr.P.C. is not invoked or exercised in the main trial till its conclusion and if there is a split up case, such power can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated trial).

11. After analyzing the *dicta* of the Constitution Benches in *Hardeep Singh's case* (supra) and *Sukhpal Singh Khaira's case* (supra), the Supreme Court in ***Juhru v. Karim, 2023 SCC OnLine SC 171***, unequivocally held that:-

“17. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a 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 Cr.P.C., 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 is, 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.”

12. Adverting to the merits of the present case, this Court is conscious of the principle laid down above in various dictums, on perusal of the impugned order, it is revealed that the trial Court without applying its mind has summoned the petitioner in a causal and mechanical manner as the point that needs to be considered is that in the disclosure statement of the main accused who has inflicted injuries on the person of the deceased has himself stated that the petitioner has no role to play in the alleged incident and is just being implicated to extort money from the petitioner. Moreover, the present FIR was registered after a delay of 08 days as the alleged occurrence took place on 27.11.2021 whereas the instant FIR was registered on 05.12.2021, also the deceased was taken to the hospital on the next day of the alleged occurrence on 28.11.2021 wherein the family members of the deceased in admission register of the hospital stated that the deceased received some injuries after falling down due to the over consumption of the alcohol. Lastly, the complainant wants to take the advantage of the fact that the main accused was the servant of the present petitioner and the alleged incident allegedly took place in front of the petitioner and, is therefore, trying to implicate him in a false case.

13. It, thus, comes out that the power of summoning under Section 319 Cr.P.C is not to be exercised in a routine manner and the existence of more than a *prima facie* case is *sine qua non* to summon an additional accused and with a view to prevent the frequent misuse of power to summon, ordinarily, the Court should also discourage itself from summoning the person, at the very threshold of the trial, and must evaluate such material which has to be testified vis-a-vis the material against the accused who is already facing trial. In the absence of any credible evidence, the power under Section 319 CrPC, ought not to be invoked.

14. In view of the above, as no *prima facie* case is made out against the present petitioner namely Jasbir Singh, therefore, the order dated 29.11.2023

whereby the petitioner has been summoned to face trial, being erroneous and illegal, is liable to be set aside.

15. Hence, the present petition stands allowed and the order dated 29.11.2023 is hereby quashed qua the present petitioner.

21.11.2024

Poonam Negi

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>