

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

244

CRR No.436 of 2020 (O&M)
Date of Decision: 19.03.2024

Arshad

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Ms. Rosi, Advocate
for the petitioner

Mr. TusharMadaan, Advocate
for Mr. Mansur Ali, Advocate
for respondents no. 2, 4 and 6

Mr. Neeraj Sharma, Advocate
for respondents no. 3 and 5.

Mr. Vikas Bharadwaj, AAG Haryana

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against impugned order dated 10.01.2020 passed by the learned Additional Sessions Judge, Nuh vide which the application filed by the petitioner for summoning of respondents No.2 to 6 as additional accused to face trial in FIR No.333 dated 03.09.2018 registered under Sections 148, 149, 316, 323 and 506 IPC at Police Station Tauru, District Nuh, has been dismissed.
2. Learned counsel for the petitioner *inter alia* contends that the PW4- Tahira (victim) has attributed specific roles to the respondents no. 2 to 6. Learned

Additional Sessions Judge has dismissed the application filed under Section 319 Cr.P.C. by the petitioner through public prosecutor, for summoning of respondents no. 2 to 6 as additional accused by means of a non-speaking order and by erroneously ignoring the law laid down by the Hon'ble Supreme Court in ***Hardeep Singh v. State of Punjab (2014) 3 SCC 92*** and ***Sugreev Kumar v. State of Punjab and others 2019 (@) Law Herald (SC) 1047***.

3. Having heard learned counsel for the petitioner and after perusing the record of the case, it transpires that respondents No.2 to 6 were never named by the petitioner in his statement made to the police. Material inconsistencies were observed in the narration of the alleged incident by PW4-Tahira, which does not inspire confidence in the prosecution case. Further, the PMR of the deceased foetus states maceration as the cause of death. The prosecution has failed to link the injuries allegedly inflicted by the respondents-accused with the miscarriage. The MLR of the PW4-Tahira is also does not reflect any nexus between the injuries sustained and the miscarriage. Moreover, the improvements made while deposing before the learned trial Court cannot form the basis for exercising the extraordinary power under Section 319 Cr.P.C. Mere statement of the complainant, which is not substantiated by any credible material, cannot be a ground to invoke the discretionary and extraordinary power of this Court to summon an additional accused under Section 319 Cr.P.C. In the absence of any material suggesting existence of more than *prima facie* case available during the course of 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 Court in ***Hardeep Singh Vs. State of Punjab*** (supra) has held that the power under Section 319 Cr.P.C is a discretionary and extraordinary power. It is to be exercised only on the basis of

the material available before the Court during the 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. 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.

5. In view of the aforesaid facts and circumstances, this Court does not find any merit in the arguments raised by the counsel appearing for the petitioner. Consequently, the impugned order dated 10.01.2020 passed by the learned Additional Sessions Judge, Nuh is upheld and the revision petition stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

March 19, 2024
vishnu

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