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and Section 4 of POCSO Act, 2012, Section 3 of SC/ST Act, 1989 has been added at the time of presentation of challan and Section 376(E) of IPC has been deleted and Section 376 of IPC added in the challan, registered at Police Station Goindwal Sahib District Tarn Taran, Punjab, vide which the application under Section 319 Cr.P.C. moved by the petitioner was dismissed.

Learned counsel for the petitioner *inter alia* contends that the private respondents along with the main accused have committed the offences on the allegation that the respondents No.2 to 5 have issued threats to the petitioner/victim to not make any statement against the accused and also told that they have good links with the police and will use their influence. It is further submitted that when the petitioner requested the police officials to implead respondents No.2 to 5 in the FIR, the police did not take any action rather put pressure upon the petitioner to settle the dispute with them and the Investigating Officer, without any justifiable cause, made wrong report by mentioning that during investigation the fact regarding issuance of threat has been found false. Thereafter, the petitioner has moved an application before the learned trial Court under Section 319 Cr.P.C. The learned trial Court has rejected the application filed by the petitioner to summon the private respondents as an additional accused under Section 319 Cr.P.C. He further submits that the learned trial Court has passed the impugned order in a mechanical manner without considering the facts and circumstances of the case.

Having heard learned counsel for the parties and after perusing the record, this Court finds no infirmity in the impugned order passed by the Court below. The perusal of the record clearly indicates that the impugned order was

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passed by the learned trial Court on the ground that there is no substantive evidence against the private respondents who are sought to be summoned as an additional accused under Section 319 Cr.P.C. Moreover, there are no specific allegations against the private respondents except general allegations which are not corroborated by any other evidence or medical evidence and the private respondents cannot be summoned by invoking the power under Section 319 Cr.P.C. only on the bald allegations made by the petitioner.

This Court is of the considered opinion that the learned trial Court has passed a well reasoned order. The material available on record, does not satisfy the crucial test in view of the ratio of law laid down in '**Hardeep Singh Vs. State of Punjab and others**' 2014 (3) SCC 92, i.e. the test of 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 unrebutted, would lead to conviction.

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 of India in **Hardeep Singh's case (supra)** 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.

The trial Court must evaluate the material against the persons sought to be summoned and then adjudge whether such material, more or less,

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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.”

In view of the above, no ground is made out to interfere in the finding given by the learned trial Court, and thus, the present petition stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

24.04.2024
Neha

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