

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

CRM-M-11134-2024
Date of decision: 04.03.2024

Sanjay Kumar

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Nafees Ahmad Khan, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present petition has been filed under Section 482 Cr.P.C. seeking quashing of order dated 18.10.2021 (Annexure P-2) passed by the learned Chief Judicial Magistrate, Nuh, vide which the application under Section 319 Cr.P.C. moved by the petitioner was dismissed and order dated 03.02.2024 (Annexure P-3) passed by the learned Additional Sessions Judge, Nuh, vide which revision filed by the petitioner has been dismissed.

Learned counsel for the petitioner *inter alia* contends that the private respondents along with their co-accused have given beatings to the petitioner and his family members and they have been specifically named in the FIR and however, the Investigating Agency, without any justifiable cause, has declared them innocent and petitioner has deposed before the trial Court as PW-1 and his wife has deposed as PW-2 and both of them reiterated the allegations contained in the FIR against the private respondents. 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 passed by the learned trial Court on the ground that the mere reiteration of the version contained in the FIR (*supra*) would not be sufficient to summon the private respondents 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 respondent 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 person 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 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

04.03.2024

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