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

CRR-631-2022

Date of decision: 15.10.2024

Gurdeep Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Kunwar Rajan, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG, Punjab.

HARPREET SINGH BRAR, J.

1. The instant revision petition has been preferred against the impugned order dated 11.11.2021 passed by learned Additional Sessions Judge, Sri Muktsar Sahib vide which the application moved by the petitioner/complainant under Section 319 Cr.P.C. with a prayer to summon respondent no.2 as an additional accused in case arising out of FIR No.27 dated 26.03.2017 under Sections 452, 323, 325, 354B, 506, 148, 149 of IPC at Police Station- Kotbhai, District Sri Muktsar Sahib has been dismissed.

2. Succinctly, facts as alleged by the petitioner-complainant are that she married to one Kulvir Singh who belonged to a different caste. Her inter-caste marriage did not sit well with her maternal relatives who threatened the couple with dire consequences. Subsequently, on 24.03.2017, when the petitioner and her husband were present at their home, the accused persons including respondent no.2 while being armed with sticks, *gandas* (axes) and *kirpans* (swords) forcibly entered their premises along with 10-12 unknown persons. Thereafter, accused, Gurpreet Singh, Baljinder Singh and Harinder



Singh-respondent no.2 started abusing the couple and threatened to murder them. Some of the other accused persons held the petitioner from her hand and tore her clothes and also gave beatings to her. Together, they tried to take her out of the house. When the petitioner raised hue and cry about the same, her husband along with three other persons came forward to rescue her but were badly beaten by the other accused persons. When the co-villagers started gathering, the accused fled away from the spot. Consequently, FIR (supra) was lodged, however, during investigation no evidence was found against respondent no.2 and he was kept in the column No.2 of the police report.

3. During the prosecution evidence, the petitioner-complainant was examined as PW-1, wherein, she reiterated her version and specifically testified against respondent no.2. Thereafter, the prosecution moved an application under Section 319 Cr.P.C. for summoning respondent no.2 as an additional accused but the same was dismissed by the learned trial Court vide order dated 11.11.2021. Aggrieved, the petitioner has approached this Court by way of the present revision petition.

4. Learned counsel appearing for the petitioner vociferously contends that the learned Court below has erred by ignoring the overwhelming evidence present against respondent no.2 which has been duly corroborated by the petitioner in her examination-in-chief. The petitioner has categorically deposed regarding the specific role played by respondent no.2 in committing the alleged offences and she corroborated her statement made under Section 161 Cr.P.C. before the concerned police. It is also argued that no cogent reasons were given by the jurisdictional police which would justify his exoneration. It is contended that more than prima-facie evidence exists against respondent no.2 as he has



been specifically named in all the statements made by the petitioner and specific role has been attributed to him therein.

5. Learned state counsel submits that the complainant has categorically deposed in her examination-in-chief regarding involvement and complicity of respondent no.2, thereby, duly corroborating the allegations levelled by her in her complaint. She further submits that more than prima facie case is made out in order to summon respondent no.2 as additional accused.

6. I have heard the learned counsel for the parties and perused the material available on record. It transpires that the petitioner has deposed as PW1 before the learned trial Court and elaborated the role of respondent no.2 in commission of the alleged offence. However, the petitioner did not specify any such role of respondent no.2 in her statement made to the concerned police. Even in her supplementary statement made under Section 161 Cr.P.C. on 05.05.2017, not even a whisper regarding the alleged role of respondent no.2 is made. Furthermore, in the statement of the petitioner made under Section 164 of Cr.P.C., it is quite bemusing to note that respondent no.2 has not been named as the person accompanying the co-accused persons at the time of the alleged incident. Upon further perusal, it has come to the fore that role of respondent no.2, as alleged by the petitioner, finds no mention in the statements made under Section 161 Cr.P.C. by the injured Navjot and Manpreet Kumar. All the aforesaid facts, when clubbed together, paint a picture in which guilt of respondent no.2 is in no possible way established in order to summon him to face trial along with other co-accused.

7. At this juncture, it is important to discuss the scope of Section 319 Cr.P.C. A Constitution Bench of Hon'ble Supreme Court in case titled **Hardeep**



Singh Vs. State of Punjab, SC 2014(1) RCR (Criminal) 623 has delved into the ambit of Section 319 Cr.P.C. and has held as under:

"105. Power under Section 319 Cr.P.C. 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 Cr.P.C. In Section 319 Cr.P.C. 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 Cr.P.C. to form any opinion as to the guilt of the accused."

8. Subsequently, Hon'ble Supreme Court in the case of **Sagar Vs. State of Uttar Pradesh and another Criminal Appeal No. 397 of 2022 (Arising out of SLP(Crl) No.7373 of 2021)**, while referring to **Hardeep Singh (supra)** observed as follows:



"The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above 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 unrebutted, would lead to conviction."

9. Recently Hon'ble Supreme Court in case of **Juhru & Ors. Versus Karim & Anr. 2023 AIR (Supreme Court) 1160** elaborated upon the scope of section 319 Cr.P.C and made the following observations:

"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 quo 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."

10. It is trite law that mere statement of the complainant, which is unsubstantiated 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. Such discretion must be exercised with

parsimony, having regard to the facts and circumstances of the case. In the absence of any material suggesting existence of more than prima facie case available during the course of trial of an offence, the Courts must refrain themselves from exercising the extraordinary power under Section 319 Cr.P.C.

11. Taking into consideration facts and circumstances of the case at hand, especially the fact that the petitioner has ostensibly tried to improve her version in order to implicate respondent no.2, this Court is of the opinion that case of the prosecution does not satisfy the test of more than prima facie case against respondent no.2. which is sine qua non to summon someone as an additional accused under Section 319 Cr.P.C. as enunciated in **Hardeep Singh's case (supra)**.

12. Accordingly, the instant revision petition is dismissed being bereft of any merit.

(HARPREET SINGH BRAR)
JUDGE

15.10.2024
Neha

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