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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRR-584-2024 (O&M)**

Date of Decision:- 15.07.2024

Jaspreet Singh @ Pali Singh and Another

....Petitioners

Vs.

State of Haryana and Another

...Respondents

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTIPresent:- Dr. Anju Sharma, Advocate
for the petitioners.

Mr. Rupinder Singh Jhand, Addl. AG Haryana.

AMARJOT BHATTI, J.

Jaspreet Singh @ Pali Singh and Raju @ Rajwant Singh have filed revision against order dated 29.09.2023 vide which they have been summoned on application under Section 319 Cr.P.C. to face trial along with co-accused Balwinder Singh.

2. Facts of the case are that FIR No. 73 dated 13.07.2020 has been registered on the statement of Tarsem Singh who alleged that they were two brothers. His younger brother was Gurpreet Singh, aged about 33 years. He was a married man having a son, aged about 13 years. Gurpreet Singh was residing separately for the last three years. He had relationship with Amandeep Kaur wife of Balwinder Singh. They used to talk to each other on phone and Gurpreet Singh used to visit the house of Amandeep Kaur during odd hours. On 12.07.2020, at about 10/11 O' clock night, his

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brother went to his fields to protect the crops from stray cattle. On 13.07.2020, at about 02:15 AM, his cousin Mahima Singh informed that Gurpreet Singh was killed by Balwinder Singh at his house by inflicting injuries with *Gandasa*. He along with Mahima Singh and other relatives reached the house of Balwinder Singh where dead body of Gurpreet Singh was lying in a pool of blood. It is alleged that Balwinder Singh killed his brother Gurpreet Singh due to relationship of his (complainant's) brother with the wife of Balwinder Singh. The investigation was carried out and thereafter, challan was presented against Balwinder Singh accused.

3. As per record, Balwinder Singh accused was charge-sheeted and statement of Tarsem Singh complainant was recorded in examination-in-chief on 15.07.2022. At this stage, application was filed under Section 319 Cr.P.C. to summon Amandeep Kaur, Pali Singh and Raju as accused to face trial under Section 302 of IPC and said application was declined vide detailed order dated 29.10.2022, which is Annexure P-3. Apart from this, Tarsem Singh had filed a private complaint bearing No. 71/2020 under Section 302/34 of IPC, Police Station City Sirsa against Balwinder Singh, Amandeep Kaur, Pali Singh and Raju which was dismissed vide order dated 07.12.2021, Annexure P-7. During course of arguments, it was confirmed that revision against the aforesaid order was also dismissed, though copy of that judgment is not placed on record. Thereafter, complainant filed second application under Section 319 Cr.P.C. duly forwarded by Public Prosecutor for the State, which is Annexure P-5. Reply to this application filed by Balwinder Singh is Annexure P-6. Said application was allowed by learned Sessions Judge, Sirsa by passing

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impugned order dated 29.09.2023, which is challenged by present petitioners filing this revision. As per this order, learned Sessions Judge, Sirsa came to the conclusion that there was no sufficient evidence on record to establish the involvement of Amandeep Kaur and application qua her summoning was dismissed, whereas, application for summoning of Pali Singh and Raju was allowed.

4. Learned counsel for the petitioners argued that there was no justification in filing of second application under Section 319 Cr.P.C. when first application under the same provision was dismissed by passing detailed order dated 29.10.2022, Annexure P-3. Learned trial Court failed to consider that during investigation of the case, present petitioners were found to be innocent and for this reason they were not challaned. Private complaint filed by Tarsem Singh complainant was also dismissed vide order dated 07.12.2021, Annexure P-7 and criminal revision was also dismissed by learned Sessions Judge, Sirsa. Prosecution examined Tarsem Singh and Mahima Singh who have made material improvements in their statements before the trial Court and have introduced completely a new version. There was no eye witness to the said occurrence but now by changing the version, Mahima Singh claimed himself to be eye witness to the occurrence. It is argued that during investigation, disclosure statement of Balwinder Singh was recorded, which is Annexure P-11. He did not named any other person in the commission of offence. No specific role was attributed to them nor any incriminating article was recovered from their possession. Considering these facts, they were found to be innocent during investigation. Supplementary statement of Tarsem Singh dated 14.07.2020,

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Annexure P-8 is afterthought and based on hearsay evidence which cannot be relied upon. Mere suspicion is not sufficient to summon the petitioners on application under Section 319 Cr.P.C. Learned trial Court has failed to consider the record in its right perspective. Therefore, impugned order dated 29.09.2023 may kindly be set aside by accepting present revision.

5. On the other hand, learned counsel representing the State confirmed the factual position as referred above. He referred to the statements of Tarsem Singh PW-3 and Mahima Singh PW-4 recorded in the Court, Annexures P-9 and P-10 respectively, where Mahima Singh categorically stated that on that day he was going to his fields and passing through street in front of the house of Balwinder Singh. He heard some noise from the house of Balwinder Singh and he saw through the main gate of house that Balwinder Singh armed with *Gandasa*, Pali Singh armed with *Kasiya* and Raju armed with *Danda* were causing injuries to Gurpeet Singh with their respective weapons and when he tried to intervene, they ran towards him, therefore, he ran away from there and called his cousin Tarsem Singh on his mobile phone and also informed Major Singh, Sarpanch of village. After half an hour, Tarsem Singh along with Sarpanch Major Singh and Darshan Singh came there and they went to the house of Balwinder Singh. It is argued that Mahima Singh PW-4 being eye witness has attributed specific role to Balwinder Singh and each of the petitioner. Therefore, considering the statement of Mahima Singh PW-4 recorded during trial is sufficient to summon present petitioners on application under Section 319 Cr.P.C. It is argued that revision preferred by

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present petitioners is without merits.

6. I have considered the arguments advanced before me and have gone through the record carefully. In the case in hand, after investigation, Balwinder Singh accused was challaned to face trial for the murder of Gurpreet Singh. Copy of challan report is Annexure P-2. At this stage, involvement of no other person was found in the occurrence. After framing of charge-sheet against Balwinder Singh, statement of Tarsem Singh was recorded in examination-in-chief on 15.07.2022, Annexure P-9 and on that basis first application under Section 319 Cr.P.C. was filed to summon additional accused i.e. present petitioner and Amandeep Kaur which was dismissed vide order dated 29.10.2022, Annexure P-3. Private complaint filed by Tarsem Singh against Balwinder Singh and others was also dismissed vide order dated 07.12.2021, Annexure P-7. After recording of complete statement of Tarsem Singh as PW-3 and complete statement of Mahima Singh as PW-4, Annexures P-9 and P-10 respectively, second application was filed under Section 319 Cr.P.C. for summoning of present petitioners along with Amandeep Kaur to face trial under Section 302 of IPC along with Balwinder Singh. Said application was partly allowed by passing impugned order dated 29.09.2023 vide which summoning of Amandeep Kaur was declined whereas, present petitioners were ordered to be summoned to face trial.

7. In order to summon additional accused under Section 319 Cr.P.C, prosecution is required to bring on record relevant evidence which is more than *prima facie* case. No doubt application under Section 319 Cr.P.C. can be filed at any stage but at the same time facts of case and



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evidence led on record has to be perused carefully. Gainful reference can be made to the judgment of **Hon'ble Supreme Court of India** in case titled "**Hardeep Singh Versus State of Punjab and others**" along with **other connected cases**, cited in **2014(3) SCC 92**. Relevant paragraphs No. 98 and 99 runs as under :-

"98. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary 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.

99. 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."



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There is another judgment of **Hon'ble Supreme Court of India** cited in **2021(4) R.C.R.(Criminal) 219**, case titled "**Ramesh Chandra Srivastava Versus State Of U.P. & Anr.**", where again in para No. 8 it was observed as under :-

"8. We say this for the following reason:

The test as laid down by the Constitution Bench of this Court for invoking power under Section 319 Cr.P.C. inter alia includes the principle that only when strong and cogent evidence occurs against a person from the evidence the power under Section 319 Cr.P.C. should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by this Court, is one which is more than prima facie case which is applied at the time of framing of charges."

Therefore, keeping in mind the aforesaid principles, facts and circumstances of present case are to be considered. As per the first statement of Tarsem Singh complainant, he alleged that his brother Gurpreet Singh left the house at about 10/11 O' clock night and he came to know about the occurrence on 13.07.2020 at 02:15 A.M. through his cousin Mahima Singh that his brother Gurpreet Singh was killed by Balwinder Singh s/o Dula Singh by inflicting injuries with *Gandasa*. Copy of FIR is Annexure P-2. Statement of Mahima Singh recorded under Section 161 Cr.P.C. on 13.07.2020 is Annexure P-4 where he confirmed the facts as stated by Tarsem Singh complainant. Tarsem Singh complainant changed his stand on the next day i.e. 14.07.2020 by giving supplementary statement, Annexure P-8. Admittedly, Tarsem Singh was not eye witness to the occurrence. Mahima Singh in his statement recorded under Section 161

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Cr.P.C., Annexure P-4, claimed that he came to know that Gurpreet Singh was killed by Balwinder Singh at his house by inflicting injuries by *Gandasa*. Aforesaid statement did not indicate that he was eye witness to the occurrence. Later on, Tarsem Singh in his supplementary statement Annexure P-8 claimed that on inquiry at his own level he came to know that his brother was murdered by Pali Singh, Raju and 2-3 other persons. As per this statement, Amandeep Kaur was pressurized by Balwinder Singh to call Gurpreet Singh at his house where said occurrence took place. Even in this statement Tarsem Singh did not allege that Mahima Singh saw present petitioners and Balwinder Singh murdering Gurpreet Singh. Disclosure statement of Balwinder Singh Annexure P-11 is on record where he did not name any other accused. The Investigating Officer did not collect any such evidence.

8. Therefore, considering the aforesaid factual position, impugned order dated 29.09.2023 passed by learned trial Court on second application under Section 319 Cr.P.C. is not justified. The order passed in private complaint filed by complainant, dated 07.12.2021, Annexure P-7, cannot be ignored. Learned trial Court has failed to appreciate that first application under Section 319 Cr.P.C. was declined vide order dated 29.10.2022, Annexure P-3 and against said order no revision was preferred either by the State or by complainant Tarsem Singh.

9. In the light of aforesaid facts and circumstances, I do not find sufficient evidence/record on file to summon Jaspreet Singh @ Pali Singh and Raju @ Rajwant Singh to face trial under Section 302 of IPC. Thus, impugned order dated 29.09.2023 passed by learned Sessions



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Judge/Special Court, Sirsa is accordingly set aside by accepting the present revision petition.

10. There is a delay of 75 days in filing of this criminal revision. As the matter has been adjudicated upon on merits, question of delay in filing the criminal revision is rendered academic. Application is disposed of accordingly.

11. Criminal Revision filed by petitioners Jaspreet Singh @ Pali Singh and Raju @ Rajwant Singh is accordingly allowed.

12. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

15.07.2024
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(AMARJOT BHATTI)
JUDGE

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