

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

CRR No.2401 of 2017 (O&M)

Decided on:08.02.2024

Nanita Devi

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sumit Sangwan, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. Krishan Sharma Bhardwaj, Advocate
for respondents No.2 to 8.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against the order dated 20.04.2017 passed by the learned Additional Sessions Judge, Bhiwani whereby the application filed by the petitioner under Section 319 Cr.P.C. for summoning of respondents No.2 to 8 as accused to face trial in FIR No.258 dated 01.05.2016 under Sections 302, 307, 325, 323, 506, 34 IPC registered at Police Station Sadar, Bhiwani, has been dismissed.

2. The facts, in brief, are that on 15.02.2016 the petitioner/complainant along with her husband and father-in-law were working in the fields, when petitioner's father-in-law, namely, Umed Singh was deliberately hit by a tractor, which was being driven by the accused Krishan. Thereafter, the accused together with Khajani (respondent No.7), Santosh (respondent No. 2), Rahul (respondent No.4), Rohit (co-accused) and Nitin (respondent No. 6) alighted from the tractor

and assaulted her father-in-law. When the petitioner and her husband tried to intervene, they too were attacked by the accused persons and as a result thereof, suffered injuries. Later on, petitioner's father-in-law succumbed to his injuries. The cause for conflict was an alleged land dispute between the families of the petitioner/complainant and the accused.

3. Following this incident, the aforesaid FIR was registered by the police against the accused persons. During investigation, the police found no incriminating material against respondents No.2 to 8 and filed the chargesheet only against Krishan and Rohit.

4. Consequently, during trial, after deposition of the complainant as PW-10, the learned Public Prosecutor submitted an application under Section 319 Cr.P.C. and averred that respondents No.2 to 8 be summoned as additional accused to face trial. The learned trial Court vide order dated 20.04.2027, dismissed the said application. Hence, the present revision.

5. Learned counsel for the petitioner contends that there is nothing on record to show as to on what basis the investigating agency filed final report only against two accused persons, despite specific roles having been attributed in the FIR to respondents No.2 to 8 and their presence being duly substantiated by the complainant. It is further contended that the complainant in her deposition before the learned trial Court has duly corroborated the version of FIR and therefore, respondents No.2 to 8 were liable to be summoned to face trial as additional accused. He relies upon the judgment rendered by the Hon'ble Supreme Court in *Hardeep Singh vs. State of Punjab 2014 (3) SCC 92* to contend that even a person who was not named in the FIR or not chargesheeted by the police can be summoned under Section 319 Cr.P.C.

6. I have heard learned counsel for the parties and perused the paper book with their able assistance.

7. A perusal of the examination-in-chief reveals that the complainant has reiterated the version of the FIR. The investigating agency after conducting investigation submitted the final report under Section 173 Cr.P.C. against Krishan and Rohit and on finding no incrimination evidence against respondents No.2 to 8, exonerated them. The FIR is not supposed to be an encyclopedia of the entire events and cannot contain the minute details of the events. Mere statement of the complainant reiterating the contents of FIR/complaint 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 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.

8. The trial Court must evaluate the material 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 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.

9. In view of the aforesaid facts and circumstances, the impugned order dated 20.04.2017 is upheld and the instant petition stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

February 08, 2024
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	No