

**Date of decision: 09.02.2024**

**...PETITIONER**

V/S

## ...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Mr. Sandeep Kumar, DAG, Punjab.

Mr. S.K. Bawa, Advocate for respondent Nos.2 to 4.

Mr. A.P.S. Deol, Sr. Advocate with  
Mr. Vishal R. Lamba, Advocate with  
Mr. Himmat Singh Deol, Advocate for respondent Nos.5 and 6.

\*\*\*\*

**HARPREET SINGH BRAR J. (ORAL)**

The prayer in the present petition is for setting aside the impugned order dated 21.09.2017 passed by learned Additional Sessions Judge, Ludhiana in Sessions Case No.587/2016 titled as “State v. Inderjit Singh and others”, dismissing the application of the petitioner under Section 319 Cr.P.C., seeking summoning of respondents No.2 to 6 as additional accused to face trial in case FIR No.174 dated 07.06.2016.

2. Learned counsel for the petitioner *inter alia* contends that the perusal of the record indicates that the FIR was lodged with promptitude, which rules out any scope of deliberation and all the respondents were named by giving specific role, played by each of them, in the FIR. Even, during

investigation, the co-accused, who were arrested by the investigating officer suffered disclosure statement and had elaborated the role and the names of three respondents namely, Kirpal, Bobby and Lucky. Learned counsel further contends that the investigating officer has conducted one sided investigation, with a pre-determined mind to give a clean chit to the respondents, as they were never arrested or joined in the investigation at any point and the opinion of the learned trial Court is based on presumption, as the finding recorded is that 03 damaged lead bullets extracted from the body of the deceased also could be of 0.32 bore.

3. Learned senior counsel representing the respondents submits that the arguments advanced by learned counsel for the petitioner with regard to formation of the opinion by the learned trial Court, merely on presumption, is liable to be rejected, as the scientific evidence, in the shape of FSL, has conclusively established that only one weapon was used in the alleged incident and that was recovered from co-accused, namely, Inderjit Singh and further, there is no corroboration of the ocular version from the medical evidence, as all the injuries were found on the person of deceased are on the front side so, it proves that not more than one person is involved in the present case. Moreover, nothing new has come on record, which warrants the summoning of the respondents as additional accused. The complainant has merely reiterated his earlier version, in the complaint, which after thorough investigation was found to be false to the extent that the private respondents are not involved. Learned senior counsel further relies upon the judgments passed by the Hon'ble Supreme Court in ***Meenu Prakash Bhantu v. State of Uttar Pradesh, 2023(2) RCR (Criminal) 516; Vikas Rathi v. State of U.P., 2023(2) RCR (Criminal) 55 and Juhru v. Karim, 2023(2) SCC (Criminal) 509.***

4. Having heard learned counsel for the parties and after perusing the

record, it transpires that the complainant has reiterated the version of the FIR, while recording his examination-in-chief as PW-1. The investigating agency after concluding the investigation, has exonerated Kirpal Singh *alias* Pala, Rakesh Kumar *alias* Bobby Khumbawala, Lucky *alias* Chota Bhagat Singh, Somnath *alias* Fauji and Rajan Awal. The stand of the petitioner is that specific overt acts have been attributed to them, as is evident from statement made on oath by PW-1 Kuljit Singh @ Rubal, who has proved his statement Ex.P1 on record, on the basis of which, the present FIR was registered. However, a perusal of the record would show that the allegations against respondent Nos.2 to 6, are that four of them Kirpal Singh *alias* Pala, Rakesh Kumar *alias* Bobby Khumbawala, Inderjit Singh and Rajan Awal fired gun shots from their respective revolvers hitting on the chest, head and arm of the deceased Kamalpreet Singh. However, as per the report of the FSL, all the five cartridge cases recovered from the spot had been fired from the revolver, recovered from the possession of accused Inderjit Singh and this fact falsifies the plea of the complainant to the effect that gun shots were fired by respondent Nos.2 to 6 from their respective revolvers besides accused Inderjit Singh and corroborate the opinion of the investigating agency. Further, inquiry in this case was conducted by Assistant Commissioner of Police on filing of applications by the accused. Vide inquiry report dated 01.11.2016, it was found that the said five respondents had not committed the offence in question and they were not present at the place of occurrence. Further there is no corroboration of solitary statement of PW-1 Kuljit Singh to the effect that respondent Nos.2 to 6 were present at the place of occurrence and did any overt act.

5. 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.

6. 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.”*

7. In view of the aforesaid facts and circumstances, this Court finds no ground to set aside the impugned order passed by learned Additional Sessions Judge, Ludhiana. As such, the present petition stands dismissed.
8. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and trial Court shall proceed without being prejudiced by observations of this Court.

February 09, 2024  
*manisha*

(HARPREET SINGH BRAR)  
JUDGE

- (i)

Whether speaking/reasoned

Yes/No
- (ii)

Whether reportable

Yes/No