



from the petitioner, the accused refused to mend their ways. On 21.10.2017, the petitioner received a phone call from his daughter wherein she told him that the accused were forcing her to fetch Rs.5 lacs in cash or a big car. Then on 27.10.2017, the petitioner received a phone call from an unknown caller who told him that his daughter had been murdered. When the petitioner and his family members reached the house of the accused, he found the dead body of his daughter lying on a cot with visible marks of injuries on her cheeks, leg and neck. Thereupon, the petitioner moved a complaint before the police and after following due procedure, the FIR (supra) came to be registered against the accused. However, in the final report under Section 173 Cr.P.C., respondent Nos.2 to 5 were kept in column no.2 and the challan was presented only against the co-accused-husband and mother-in-law.

3. Thereafter, the petitioner moved an application under Section 319 Cr.P.C. for summoning respondent Nos.2 to 5 as additional accused and the same was dismissed vide impugned order dated 19.07.2018 by learned Additional Sessions Judge, Mewat, District Nuh.

4. Learned counsel for the petitioner vociferously contends that the petitioner while being examined as PW-8 before the learned trial Court, duly corroborated the allegations levelled in the FIR (supra) as well as the statement made by him under Section 161 Cr.P.C. qua respondents no.2 to 5. He further submits that the allegations against all the accused persons were uniform since they committed the offence in collusion with each other while residing in a shared household. It is further submitted that the impugned order has been passed in the most perfunctory manner and is liable to be set aside.

5. Learned counsel for respondent Nos.2 to 5 contends that the power enumerated under Section 319 Cr.P.C. cannot be used merely on the



wishes of the complainant but requires cogent and clinching evidence and thus the application under Section 319 Cr.P.C moved by the petitioner has rightly been dismissed since it amounted to abuse of process of law.

6. I have heard the learned counsel for the parties and perused the record of the case with their able assistance. It transpires that respondent no.2 to 5 were found innocent by the investigating agency after conducting a thorough investigation. Although, the fact that final report under Section 173 Cr.P.C. is not presented against an accused is in no way a limiting factor to the powers of a trial Court to summon him under Section 319 Cr.P.C., the same has to be done sparingly and cautiously. In the present matter, the allegations levelled by the petitioner are devoid any specificity qua the aforesaid respondents. Keeping in view the omnibus nature of allegations qua respondent Nos.2 to 5, this Court does not find any force in the learned counsel for the petitioner. It is pertinent to discuss the perspicuous observations made by the Hon'ble Supreme Court in some of its recent judgments. Discussing the scope of Section 319 Cr.P.C., the Constitution Bench of Hon'ble Supreme Court in case titled ***Hardeep Singh Vs. State of Punjab, SC 2014(1) RCR (Criminal) 623*** has laid down that:

"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."

7. Similarly, the 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)**, referring to **Hardeep Singh (supra)** laid down that:

"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 un rebutted, would lead to conviction."

8. Recently Hon'ble Supreme Court in case of **Juhru & Ors. Versus Karim & Anr. 2023 AIR (Supreme Court) 1160** observing the scope of Section 319 Cr.P.C held that:

"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.”

9. In the case at hand, a perusal of the case material reveals that there is no credible and cogent evidence on record to establish that more than a prima facie case is made out against respondent no.2 to 5 to summon them as additional accused.

10. In view of the above discussion, this Court finds no reason to interfere with the above-mentioned impugned order dated 19.07.2018 passed by learned Additional Sessions Judge, Mewat, District Nuh. Hence, the present revision petition stands dismissed.

11. Pending miscellaneous application(s), if any, shall stand(s) disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

Reserved on : July 22, 2024
Pronounced on : July 23, 2024
manisha

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No