

CRR-3276-2018

1

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

CRR-3276-2018

Date of Decision: 04.12.2024

AJAY AND OTHERS

...Petitioners

V/S

STATE OF HARYANA & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Munish Behl, Advocate
for the petitioners.

Mr. Vikas Bhardwaj, AAG, Haryana

HARPREET SINGH BRAR J. (ORAL)

1. The instant revision petition has been preferred against the impugned order dated 13.09.2018 passed by learned Judge, Special Court-cum-Additional Sessions Judge, Ambala vide which the petitioners have been summoned as additional accused by allowing the application filed by respondent no.2 under Section 319 of Cr.P.C. The case stems from FIR No.13 dated 29.01.2017 registered under Sections 323, 325 of IPC and Section 8 POCSO Act at Police Station- Women, Ambala.

2. Succinctly, facts of the case are that FIR (supra) came to be registered on the statement made by respondent no.2 before the concerned police. It was alleged therein that on 28.01.2017, at about 5.00 PM, when her mother had sent her to fetch clothes, accused Lakhwinder Singh whose house fell on the way, made her to come inside the house by telling her that his wife was calling her. When respondent no.2 went inside the house of Lakhwinder Singh, he pulled her hand, covered her mouth so that she could not raise any alarm and then started beating her. Somehow, respondent no.2 managed to raise an alarm, upon which, her mother came

CRR-3276-2018

2

to the spot. Soon after, their neighbour Parveen along with his mother also reached there. It was further alleged that the present petitioners were present along with accused Lakhwinder Singh on the spot and gave beatings to the family members of respondent no.2.

3. Upon completion of investigation by the concerned police, final report under Section 173 Cr.P.C. was presented only against accused Lakhwinder Singh, whereas, the present petitioners were found innocent and thus exonerated therein. Subsequently, the trial Court framed charges against Lakhwinder Singh only for commission of offences punishable under Sections 323, 325 of IPC and Section 8 of Protection of Children from Sexual Offences Act, 2012. Thereafter, respondent no.2-complainant stepped into the witness box and reiterated the averments made in the FIR. During the pendency of trial against Lakhwinder Singh, application was filed under Section 319 Cr.P.C. on behalf of the complainant but was later withdrawn on account that the main injured, namely Parveen Kumar, was not examined at that point of time. After examination of Parveen Kumar as PW-3 before the learned trial Court, another application under Section 319 Cr.P.C. was moved before the Court which was allowed and the present petitioners were summoned to face trial as additional accused. Aggrieved by the same, they have approached this Court by way of the present revision petition.

4. Learned counsel appearing for the petitioners inter alia contends that the learned Court below failed to consider the statement of the complainant-respondent no.2 under Section 164 Cr.P.C., wherein, names of the present petitioners find no mention. Furthermore, it has been stated that it was Lakhwinder Singh who gave beatings to the complainant

CRR-3276-2018

3

and her brother. It is further submitted that there is a major discrepancy between the statement made by the complainant which led to registration of FIR(supra) and the one made subsequently before the police on 27.03.2017. In her first statement, the complainant has mentioned that the alleged incident occurred on 28.01.2017, whereas, in the subsequent statement she has stated that the alleged incident took place on 27.01.2017. In addition, in all the statements recorded under Section 161 Cr.P.C. of all the witnesses, the date of alleged incident has been mentioned as 28.01.2017. This shows that the entire story has been concocted by the complainant. He further submits that in view of the settled law that degree of satisfaction required under Section 319 Cr.P.C. is much higher than merely a prima facie satisfaction required at the time of framing of charges, the impugned order deserves to be set aside.

5. Learned state counsel submits that the complainant has categorically deposed in her examination-in-chief regarding involvement and complicity of the petitioners and they have been specifically named in the FIR. It is contended that no reason has come in the final police report for declaring the present petitioners as innocent. He submits that no interference is as such warranted by this Court.

6. I have heard the learned counsel for the parties and perused the material available on record. It transpires that in the statement of the victim/complainant recorded under Section 164 Cr.P.C., names of the petitioners are completely absent. Not even a whisper has been made qua their involvement. Only, accused Lakhwinder Singh has been named therein. As submitted by the learned counsel for the petitioners, there indeed exists a discrepancy qua the date of alleged incident in two separate

CRR-3276-2018

4

statements made by the complainant before the police. In her first statement, she has mentioned the date of alleged incident as 28.01.2017 whereas in the statement made after two months, the same has been mentioned as 27.01.2017. In addition, the investigating agency has exonerated the present petitioners after conducting a detailed investigation on the ground that no evidence has been found against them. It is trite law that summoning of a person as an additional accused under Section 319 Cr.P.C. requires a much stronger evidence than mere probability of complicity of such person in committing the alleged offence. Undisputedly, it is an extraordinary power and should be used with parsimony.

7. 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."

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)**, referring to **Hardeep Singh (supra)** made the following observations:

"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."

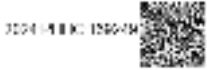
9. Recently Hon'ble Supreme Court in case of **Juhru & Ors.**

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.”

10. 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. 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 should refrain themselves from exercising its discretionary and extraordinary power under Section 319 Cr.P.C. The

Constitution Bench of the Hon'ble Supreme Court in **Hardeep Singh's**



CRR-3276-2018 7
case (supra) has held that the power under Section 319 Cr.P.C is a discretionary and extraordinary and the same must be exercised judicially, having regard to the facts and circumstances of the case.

11. Taking into consideration the peculiar facts and circumstances of the case at hand, especially the fact that the present petitioners have not even been named in the statement made by the victim/complainant under Section 164 Cr.P.C., this Court is of the opinion that case of the prosecution does not satisfy the test of more than prima facie case qua the present petitioners as enunciated in Hardeep Singh's case (supra).

12. Accordingly, the instant revision petition is allowed and the impugned order dated 13.09.2018 passed by learned Judge, Special Court-cum-Additional Sessions Judge, Ambala, is hereby set aside along with subsequent proceedings, if any, qua the present petitioners.

04.12.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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