

-1-

CRR-1176-2024
Decided on : 22.08.2024

..... Petitioners

Versus

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Pankaj Kaushik, Advocate
for the petitioners.

Manjari Nehru Kaul, J.(Oral)

Petitioners have approached this Court for quashing of order dated 01.04.2024 passed by JMIC, Assandh in case FIR No.904 dated 27.10.2018 vide which application filed under Section 319 Cr.PC for summoning them to face trial along with other accused was allowed.

2. Learned counsel for the petitioners asserts that the order dated 01.04.2024 vide which application under Section 319 Cr.PC moved by the prosecution to summon the petitioners to stand trial along side the other accused was passed is illegal, arbitrary and without proper appreciation of the facts particularly the strained relations between the parties, which was apparently the reason behind naming them in the FIR in question. It has been contended that a plain reading of an FIR in question, which has been annexed



as Annexure P-2, reveals that although the petitioners are mentioned by name, no specific role or involvement has been attributed to them. Consequently, after a thorough investigation, the police rightly found the petitioners innocent and accordingly placed them in Column No.II of the chargesheet.

3. Learned counsel has further emphasised that the present case against the accused including the petitioners is rooted in a property dispute. It has been submitted that the father of the petitioners, Sompal, legally purchased a residential plot within the Lal Dora of village Ardana, P.S. Assandh District Karnal, from the brother of Mamraj i.e. husband of the complainant. This transaction led to hostility, as the family of the complainant, holding a grudge against the family of the petitioners, sought to pressurise them into vacating the plot. Learned counsel has further argued that the narrative presented in the FIR along with the testimonies of PW-1 Kusum Devi (injured) and PW-4 Sonia before the trial court, is entirely fabricated. These witnesses have concocted their story to mask their own misconduct and to exploit the situation for their advantage due to personal vendetta against the petitioners and their family. It has also been argued that even assuming though not admitted that the petitioners had participated in the occurrence in question, the role attributed to them was minor in nature and it did not thus, warrant their summoning under Section 319 Cr.PC.



4. Furthermore, learned counsel has submitted that due to the enmity between the parties, the petitioners had been falsely implicated in a case earlier under various Sections of the Indian Penal Code and the POCSO Act by the complainant party, however, that FIR was later cancelled after it came to light that the allegations were baseless and without substance. A prayer has, therefore, been made, in the aforementioned facts and circumstances, to set aside the impugned order vide which the petitioners have been summoned to face trial as additional accused in the FIR in question.

5. I have heard learned counsel for the petitioners and perused the material placed on record.

6. Section 319 of the Cr.PC is grounded in the principle of "*Judex damnatur cum nocens absolvitor*" (A Judge is condemned when the guilty is acquitted), which underscores the responsibility of a Court to ensure that those, who are truly guilty do not escape justice. This doctrine serves as a guiding principle for the application and scope of Section 319 of the Cr.PC. The essence of this provision lies in striking a balance between two fundamental principles: ensuring that the innocent are not unjustly punished and that true perpetrator of a crime does not evade accountability and punishment.

7. Hon'ble the Supreme Court in the case of ***Hardeep Singh vs. State of Punjab, (Constitution Bench) : 2014(3) SCC 92*** has laid down a test for invoking the provisions of Section 319 Cr.PC. This test requires evidence i.e. stronger than what is needed to frame a charge



but does not have to be so compelling as to inevitably lead to a conviction if unchallenged. The Supreme Court further stressed that the power conferred under Section 319 Cr.PC is both extraordinary and discretionary, and therefore, must be exercised sparingly. It cautioned that the Courts should refrain from summoning or detaining a person unless they are satisfied with that person's alleged involvement in the crime. This cautious approach ensures that the Courts maintain a balance between prosecuting the guilty and protecting the innocent from wrongful prosecution.

8. It would be relevant to reproduce the relevant observations and the guidelines issued by Hon'ble the Supreme Court in **Hardeep Singh's case(supra)**, which are 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 unrebutted, 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."

9. In the light of above settled law, it is pertinent to reproduce the FIR in question (Annexure P-2), which is as under:

" The applicant, Kusum Devi, wife of Mamaraj, is a resident of village Ardana.

2. On 17.10.2018, the applicant had gone to distribute prasad in the temple in village Salwan with her children. The applicant's mother-in-law was alone at home. The above-mentioned accused took advantage of the absence of the applicant and her husband and started tying their buffaloes to the plot with the intention of occupying the applicant's plot. The applicant's mother-in-law stopped them from doing so. When they attempted to stop them, the above- mentioned accused abused the applicant's mother-in-law and attempted to beat her. The



applicant's mother-in-law saved her life by locking the door of the house, regarding which an application was submitted to DSP Assandh, but the police did not take any legal action on the said application.

3. On 19.10.2018 at 8:00 a.m., Jyoti daughter of Sompal, Sompal, son of Panna, Jitendra, son of Sompal, along with others, started dumping garbage on the applicant's plot and started challenging her, saying if she had the guts, then she should stop them today. At that time, the applicant, her mother-in-law, and her minor children were present at the spot, and her husband had gone to the fields. When her son tried to record a video of the culprits dumping garbage. Sompal, Jitendra, and Jyoti started abusing them. Sompal threatened to kill them. Hearing this, Jyoti threw the brick that she was holding at the applicant, and Jitendra hit her with a stick, injuring her right leg. At that moment, the accused Ashu, Prince, and Happy arrived at the spot with sticks in their hands. Seeing them, the applicant, her mother-in-law, and her children went inside the house to save their lives. Then all the above-mentioned accused entered the house with the intention of killing the applicant. Jitendra, Prince, and Happy hit her on the head with sticks. Neelam and Rekha hit her left leg, and Rekha hit her left arm. Everyone also hit her mother-in-law. When her husband returned home from the fields, Rekha hit him on the head and leg with a brick. Hearing the commotion, many neighbours and the Sarpanch arrived at the spot. Then the accused fled from the spot, threatening the applicant that though they escaped today, they would kill her next time if



given the chance. Following this, they admitted themselves to a medical hospital in Assandh, from where she was referred to Karnal. Due to her critical condition, she was further referred to PGI, Chandigarh. Hence, it is requested that considering the above facts, a case should be registered against the culprits, and strict action should be taken. We would be highly grateful to you."

10. In addition to the aforesaid allegations levelled in the FIR, it is evident from both the impugned orders annexed with the petition and other material on record that both the material witnesses PW-1 Kusum Devi (injured) and PW-4 Sonia not only reiterated the allegations made in the FIR but also clearly detailed the roles played by the petitioners Jyoti, Prince and Happy during the occurrence in question. Both these witnesses specifically mentioned the infliction of injuries on PW-1 Kusum Devi and Parmeshwari (injured) and the physical assault on the complainant party by these petitioners alongside the already charged accused. Furthermore, it is also recorded, and has not been disputed by the learned counsel for the petitioners, that there exists documentary evidence in the form of a video clip handed over to the police after the incident, wherein all the accused, including the petitioners are visible. The contention of the learned counsel for the petitioners that false allegations have been levelled against them due to a history of strained relations, and the role attributed to them, even if assumed to be true (though not admitted), is not serious enough to



CRR-1176-2024

-8-

warrant their summoning under Section 319 Cr.PC, is entirely without any merit.

11. This Court, in view of the specific allegations and role attributed to the petitioners in the crime in question, which *prima facie* finds corroboration with the medical evidence, has no hesitation in observing that the impugned order summoning the petitioners to face trial under Section 319 Cr.PC does not warrant any interference. Accordingly, the instant petition stands dismissed.

12. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

22.08.2024
sonia

(MANJARI NEHRU KAUL)
JUDGE

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