

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

107.

CRR No.1645 of 2023 (O&M)

Date of Decision:29.01.2024

Fazlu Rehman @ Fazlu Ur Rehman

... Petitioner

Versus

Amarjit Kaur and others

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gulzar Mohammed, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

CRM No.30026 of 2023

Prayer in the application is for condonation of delay of 44 days in
filing the revision petition.

For the reasons stated in the application, the same is allowed and
delay of 44 days in filing the revision petition is condoned.

CRR No.1645 of 2023

1. The present revision petition has been filed under Section 397 read
with Section 401 Cr.P.C. seeking quashing of the impugned order dated
06.03.2023 passed by the learned Additional Sessions Judge, Jalandhar vide
which the application filed by the petitioner for summoning of respondents No.1
to 3 as additional accused to face trial in FIR No.152 dated 31.08.2021 registered
under Sections 323, 324, 341, 307, 427, 506, 326, 201, 148, 149 IPC at Police
Station Division No.5, Jalandhar, has been dismissed.

2. Learned counsel for the petitioner *inter alia* contends that the
petitioner had named respondent No.1 to 3 in his statement, however, the
jurisdictional police have not correctly recorded his statement and due to

extraneous consideration, their names were omitted. There is sufficient evidence available on record for summoning respondents No.1 to 3 as additional accused. As such, it is a fit case to exercise power under Section 319 Cr.P.C., as the petitioner while deposing before the learned trial Court has categorically named respondents No.1 to 3.

3. Having heard learned counsel for the petitioner and after perusing the record of the case, it transpires that respondents No.1 to 3 were never named by the petitioner in his statement made to the police. There is nothing on record to indicate their complicity in the final report filed under Section 173 Cr.P.C. The arguments advanced by the petitioner is required to be rejected, as the finding recorded by the learned trial Court in the impugned order would show that the petitioner never raised any grievance by filing a complaint to the senior police officers with regard to recording of incorrect statement by the jurisdictional police. Moreover, the improvements made while deposing before the learned trial Court cannot form the basis for exercising the extraordinary power under Section 319 Cr.P.C. Mere statement of the complainant, which is 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 Vs. State of Punjab (2014) 3 SCC 92*** has held that the power under Section 319 Cr.P.C is a discretionary and 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.

4. 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.

5. In view of the aforesaid facts and circumstances, this court does not find any merit in the arguments raised by the counsel appearing for the petitioner. Consequently, the impugned order is upheld and the revision petition stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

January 29, 2024
Pankaj*

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