



CRR-1312-2024

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

CRR-1312-2024 (O&M)

Date of Decision: 16.07.2024

Isham Lal

..... Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Deepak K. Bartia, Advocate,
for the petitioner.

Rajesh Bhardwaj, J. (ORAL)**CRM-27815-2024**

For the reasons mentioned in the application, the same is allowed. The delay of 99 days in filing the revision petition is condoned.

Main case

1. Petitioner has approached this Court by way of filing the present revision petition impugning order dated 14.03.2024, passed by the learned Additional Sessions Judge, Yamuna Nagar, whereby, application filed by the petitioner under Section 319 Cr.P.C. for summoning respondents No.2 and 3 as additional accused in case FIR No.177, dated 10.10.2020, registered under Sections 148, 149, 452, 323, 326, 324, 325, 307, 506, 201 IPC, at Police Station Radaur (Yamuna Nagar), has been declined.

2. Succinctly, the facts of the case are that petitioner-complainant lodged the aforesaid FIR, wherein, it was alleged that on 07.10.2020, there was exchange of hot words between Mahindro Devi and Shamina regarding Shagun daughter of Shamina. Both the parties were pacified by the neighbours. However, on 09.10.2020, at about 7:30 p.m., Mahindro, Pola and Shanky, Beeta wife of Shanky, Afsana wife of Pola alongwith their



associate, namely, Amandeep in connivance with 4-5 associates entered their house and Balinder gave knife blow on the right side of his abdomen and Shanky gave knife blow on the left side of his brother's abdomen. Pola gave rod blow on the head of his brother Manish and one another person gave sword blow on Manish's arm. Thus, several injuries were inflicted to the family members of the complainant. Seeing the gathering the accused fled away from the spot, hence, Police was requested to take legal action against the accused persons for entering their house and causing injuries to them. On the registration of the FIR, the investigation was carried out and the Investigating Agency submitted challan under Section 173 Cr.P.C. The Investigating Agency found no material evidence against Afsana and Bitu i.e. respondents No.2 and 3, thus, exonerated them and they were kept in column No.2. The charges were framed and the trial Court commenced with the recording of the statements of the witnesses. The complainant was examined by the trial Court as PW-9 and Pardeep Khan was examined as PW-5. PW-9, Isham Lal deposed that respondents No.2 and 3 gave *danda* blows on his fingers and elbow and also caused injuries with the same to his cousin, namely, Satish. PW-5, Pardeep Khan also deposed that respondents No.2 and 3 were armed with wooden *dandas*. On the basis of the deposition of PW-5 and PW-9, an application under Section 319 Cr.P.C. was filed before the trial Court for summoning respondents No.2 and 3 to face trial alongwith the co-accused. Learned trial Court after hearing both the sides, dismissed the same vide impugned order dated 14.03.2024. Hence, the petitioner-complainant is before this Court by way of filing the present petition.



3. Learned counsel for the petitioner has vehemently submitted that the petitioner is the author of the FIR and he has named in all seven accused in the FIR including both respondents No.2 and 3. However, the Investigating Agency exonerated respondents No.2 and 3 on the ground that they were not found involved in the fight. It is submitted that the Investigating Officer has wrongly and illegally dropped the names of respondents No.2 and 3 from the challan. He submits that the petitioner appeared before the trial Court as PW-9 and deposed about respondents No.2 and 3, wherein specific role has been attributed to them in the commission of offence. It is submitted that as per deposition of respondent No.5, respondents No.2 and 3 were duly armed with *dandas* and they caused injuries to the complainant side. He submits that the Investigating Agency carried out a tainted investigation and thereby exonerated them. It is submitted that application filed under Section 319 Cr.P.C. has not been appreciated by the trial Court as per the facts and circumstances and the law settled. He has submitted that the statutory power under Section 319 Cr.P.C. is an extraordinary power, which is there to prevent the miscarriage of justice, however, the learned trial Court has failed to appreciate the same and thus, rejected the application under Section 319 Cr.P.C. filed by the petitioner in a mechanical manner. He has submitted that the learned trial Court has failed to appreciate the law settled by Hon'ble Supreme Court in case of **Hardeep Singh vs. State of Punjab and others, (2014) 3 SCC 92** and **Sandeep Kumar vs. The State of Haryana and another, AIR 2023 SC 3648** and hence, the impugned order dated 14.03.2024 declining the application under Section 319 Cr.P.C. filed by the petitioner complainant for



summoning the respondents-accused, deserves to be set aside.

4. Heard.

5. After hearing learned counsel for the petitioner and perusing the record, it is apparent that the petitioner had lodged the FIR in question. Thorough investigation was carried out and challan was presented against the accused persons. However, finding no material against respondents No.2 and 3, the Investigating Agency exonerated both of them and kept them under column No.2. During the course of trial, the complainant and one Pardeep Khan deposed against respondents No.2 and 3 and thus, filed an application under Section 319 Cr.P.C. for summoning them to face trial. On the perusal of the record, it is apparent that there are oral allegations against respondents No.2 and 3, however, except the oral statement, there are no corroborating evidence to establish their complicity in the alleged commission of offence. It is revealed from the record that the investigation has been carried out by a senior officer of the rank of DSP, but finding no substance against respondent No.2 and 3 both of them were exonerated by the Investigating Agency. It is further reflected from the record that DSP, Barara, on the direction of the Inspector General of Police, Ambala Range, conducted the investigation and as per the investigation conducted by SIT both these respondents were found to be not involved in the incident. Thus, challan against them was not filed by the Police. Though both the witnesses i.e. PW-5 and PW-9 while being examined by the trial court deposed against respondents No.2 and 3, but no other evidence came on the record to corroborate the same. Learned trial Court after examining the arguments raised by both the sides and the law settled by Hon'ble Supreme Court in



Hardeep Singh's case (supra), dismissed the application under Section 319 Cr.P.C. filed by the petitioner for summoning respondents No.2 and 3.

6. To understand the controversy in the case, statutory provisions of Section 319 Cr.P.C. is necessary to be considered, which is reproduced as under:-

“Section 319. Power to proceed against other persons appearing to be guilty of offence- (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under subsection (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re- heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

7. The Constitutional Bench of Hon'ble Supreme Court in **Hardeep Singh's** case (supra) has held that power under Section 319 Cr.P.C. is discretionary and an extra ordinary power, which is to be exercised sparingly and in those cases where the circumstances so warrant. It should be exercised only where strong and cogent evidence occurs against a



person from the evidence led before the Court and such power should be exercised not in a casual and cavalier manner. It has been further held that there is no scope by the Court under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused.

8. From facts and circumstances of the present case, it is apparent that there was no material before the trial Court, which could be termed as sufficient or more than *prima facie* case made out for framing of charge for summoning of additional accused as prayed for. Hon'ble Supreme Court has held that the Court should refrain from exercising its power under Section 319 Cr.P.C. in a mechanical manner. It has been held that power under Section 319 Cr.P.C. should be used sparingly in exceptional circumstances.

9. Weighing the facts and circumstances of the present case on the anvil of law settled by the Hon'ble Supreme Court, this Court is of the opinion that the trial Court has rightly declined the application for summoning the respondents-accused, as it would be nothing but a futile exercise and would defeat the ends of justice. Resultantly, the present petition is dismissed being devoid of any merit.

16.07.2024
sharmila

Whether Speaking/Reasoned :
Whether Reportable :

(RAJESH BHARDWAJ)
JUDGE
Yes/No
Yes/No