

CRR-1307-2024 (O&M)

2024:PHHC:146294



**111 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CRR-1307-2024 (O&M)
DECIDED ON: 16.07.2024**

NASIR

.....PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. A.P.S., Mann, Advocate
for the petitioner.

Mr. Chetan Sharma, DAG Haryana.

SANDEEP MOUDGIL. J.

1. The present criminal revision petition has been preferred against the impugned order dated 18.05.2024 passed by Additional Sessions Judge, Nuh, whereby an application filed by the prosecution under Section 319 Code of Criminal Procedure (hereinafter referred to as Code), has been partially allowed and other accused/respondents are left out by the Court in case FIR No. 58, dated 18.03.2021, under Sections 148, 149, 323, 452 and 302 IPC registered at Police Station Nagina, District Nuh.

2. Learned counsel for the petitioner contends that the impugned order passed by Additional Sessions Judge suffers from great illegality and impropriety, as the same is based on surmises and conjecture and thus is liable to be set aside. He further submits that

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private accused/respondents, who are left out by the Court are liable to the summoned and tried alongwith other co-accused.

3. It is further vehemently contended that testimony of PW2 Nasir/complainant reveals that the proposed accused, who are liable to be summoned played an active role in the commissioning of the offence, alongside with other accused persons. The proposed accused persons were explicitly named in the FIR and as per the version of the PW2 Nasir demonstrates that they have actively participated in the murder of the father of the complainant namely Majid (deceased).

4. Controverting the submissions, learned State counsel argues that the proposed accused were found innocent once the case was investigated by the Special Investigation Team (SIT), Firozpur Zirka and Palwal and the proposed accused being the family members of the other summoned accused persons have been falsely implicated in the present case.

5. Heard, learned counsel for the respective parties.

6. This Court being conscious of the dictum of the Apex Court rendered by the Constitutional Bench in “**Hardeep Singh vs. State of Punjab and others**”, (2014) 3 SCC 92, while illuminating the scope of Section 319 Cr.PC, laid down that:-

“57. Thus, the application of the provisions of Section 319 CrPC, at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 CrPC can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to herein above, adding a person as an accused, whose name has been mentioned

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in Column 2 of the charge-sheet or any other person who might be an accomplice.”

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“105. Power under Section 319 CrPC 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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused.”

7. In **Hardeep Singh** (supra), the Supreme Court eloquently held that the word “evidence” in Section 319 CrPC has to be broadly understood and thus materials which have come before the Court, in course of enquiry, can be used for (i) corroboration of evidence

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recorded by Court after commencement of trial; (ii) for exercise of power under Section 319 Cr.P.C.; and (iii) also to add an accused whose name is shown in column no.2 of the chargesheet.

8. In “*Sukhpal Singh Khaira vs. State of Punjab*”, (2023) **1 SCC 289** , the Supreme Court succinctly explained the powers bestowed on the Court under Section 319 CrPC and ruled that:-

“15. At the outset, having noted the provision, it is amply clear that the power bestowed on the Court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the Court, if it appears to the Court that such evidence points to any person other than the accused who are being tried before the Court to have committed any offence and such accused has been excluded in the charge sheet or in the process of trial till such time could still be summoned and tried together with the accused for the offence which appears to have been committed by such persons summoned as additional accused.”

9. The Constitution Bench refreshed the guidelines which, the competent court, must follow while exercising powers under Section 319 CrPC and further ruled that:-

(i) if the competent court finds evidence or if application under Section 319 Cr.P.C. is filed, regarding involvement of any other person in committing the offence based on evidence “recorded at any stage in the trial” before passing of the order on acquittal or sentence, it shall pause the trial at that stage and the Court shall proceed to decide the fate of the application under Section 319 Cr.P.C.;

(ii) if the Court decides to summon an accused under Section 319 Cr.P.C., such summoning order shall be passed before proceeding further with the trial in the main case and depending upon the stage at which the

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order is passed, the Trial Court shall apply its mind to the fact as to whether such summoned accused is to be tried along with other accused or separately; and

(iii) if the power under Section 319 Cr.P.C. is not invoked or exercised in the main trial till its conclusion and if there is a split-up case, such power can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split-up (bifurcated trial).

10. After analyzing the *dicta* of the Constitution Benches in **Hardeep Singh** (supra) and **Sukhpal Singh Khaira** (supra), the Supreme Court in **Juhru v. Karim, 2023 SCC OnLine SC 171**, unequivocally held that:-

“17. 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 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 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.”

11. It, thus, comes out that the power of summoning under Section 319 CrPC is not to be exercised in a routine manner and the existence of more than a *prima facie* case is *sine qua non* to summon

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an additional accused and with a view to prevent the frequent misuse of power to summon, ordinarily, the Court should also discourage itself from summoning the person, at the very threshold of the trial, and must evaluate such material which has to be testified vis-à-vis the material against the accused who is already facing trial. In the absence of any credible evidence, the power under Section 319 CrPC, ought not to be invoked.

12. It is for the trial court to evaluate the evidence against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weight and value, as has been testified against those already facing trial and in the absence of any credible evidence, the power under Section 319 CrPC ought not be invoked.

13. The Constitution Benches in **Hardeep Singh** (supra) and **Sukhpal Singh Khaira** (supra) have cautioned that power under Section 319 CrPC 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. It is imperative to add here 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

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evidence against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weight 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.

14. Thus, this Court held 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.

15. Coming back to the case in hand, though, the proposed accused persons are specifically named in the FIR, but have not been attributed any kind of specific role and have just been implicated being the family members. The deposition of PW-2 Nasir has also only attributed specific injury to Hanif, Rukmuddin, therefore, keeping in view the gist of Section 319 of the Code i.e., a more than *prima facie* case is required to summon the accused persons, which is present case is not being made out.

16. In view of the discussions made hereinabove, this Court is of the view that the impugned order dated 18.05.2024 passed by the trial Court is does not suffer any illegality or perversity, and, therefore, the same is upheld.

17. Accordingly, the present petition is dismissed.

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18. Pending criminal misc. application, if any, shall disposed off.

16.07.2024
sham

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No