

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

201.

CRR No.1721 of 2021 (O&M)

Reserved on:07.02.2024

Pronounced on:13.02.2024

Navdeep Singh

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.K. Garg Narwana, Sr. Advocate with
Mr. Sourabh Sheoran, Advocate
for the petitioner

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J.

1. This revision has been preferred against the order dated 29.09.2021 passed by learned Additional Sessions Judge, Kaithal vide which the application moved by the prosecution under Section 319 of the Criminal Procedure Code (hereinafter referred to as Cr.P.C.) for summoning the petitioner as additional accused in FIR No.410 dated 24.07.2018 under Sections 3, 4 & 5 of the Medical Termination of Pregnancy Act, 1971, Sections 18A, 18(c), 27 and 28 of Drugs and Cosmetics Act, 1940 and Section 22 (b) of the Narcotic Drugs and Psychotropic Substances Act, 1985, registered at Police Station City Kaithal, was allowed.

FACTUAL BACKGROUND

2. The facts, in brief, are that the premises of “Arya Medical Hall” was raided by a team, constituted under the Drugs and Cosmetics Act, along with Dr. Gaurav Punia, Nodal Officer, appointed under Pre-Natal Diagnostic

Techniques Act (hereinafter referred to as the “PNDT”), upon receiving a tip regarding violations of the Drugs and Cosmetics Act as well as the Medical Termination of Pregnancy Act. As a result of the raid, narcotic tablets and four medical abortion kits were recovered from the said premises. When the accused namely Anuj Kumar, who was present at the premises, was enquired about the bills of the aforesaid recovery, he disclosed that aforesaid narcotic tablets and the kits were purchased from the petitioner herein namely Navdeep Singh. Subsequently, Dr. Gaurav Punia filed a complaint before the learned trial Court and was examined as PW-3. In his examination-in-chief, he deposed that the accused, Anuj called the petitioner in the presence of the raiding party and enquired about purchasing more abortion kits. In response, the petitioner revealed that he was not in the district, however, agreed to arrange the kits in a few days. Further, in the Recovery Memo (Ex. P-6), the accused, Anuj has mentioned the name of the petitioner as the supplier of the recovered goods. The same allegations against the petitioner were again reiterated in the complaint filed by Dr. Gaurav Punia.

3. Consequently, the learned Public Prosecutor submitted an application and averred that the petitioner be summoned under Section 319 Cr.P.C. as an additional accused to face trial. The learned trial Court vide order dated 29.09.2021, allowed the application. Hence, the present revision.

CONTENTIONS

4. Mr. S.K. Garg Narwana, learned Senior Counsel assisted by Mr. Sourabh Sheoran, Advocate appearing for the petitioner submitted that the petitioner has been wrongly ordered to be summoned as an additional accused vide the impugned order. The investigating agency after conducting a thorough investigation has submitted final report under Section 173 Cr.P.C.

wherein the petitioner has been declared innocent as no case was made out against him. No cogent material has been placed on record to make out a case against the petitioner and mere reiteration of the contents of the complaint cannot be a ground to summon the petitioner as an additional accused to face trial under Section 319 Cr.P.C. Reliance was placed upon the judgment passed by a Constitution Bench of the Hon'ble Supreme Court in *Hardeep Singh Vs. State of Punjab and others (2014) 3 SCC 92* to contend that power under Section 319 Cr.P.C. is a discretionary and extraordinary power, which is to be exercised sparingly. The said power is to be exercised only in cases where strong and cogent evidence occurs against a person from the evidence led before the Court. Further reliance was placed upon the judgment passed by the Hon'ble Supreme Court in *Babubhai Bhimabhai Bokhiria and another Vs. State of Gujarat and others (2014) 5 SCC 568; Juhru and others Vs. Karim and another Criminal Appeal No.549 of 2023* decided on 21.02.2023; *Brijendra Singh and others Vs. State of Rajasthan 2017 (3) RCR (Criminal) 374* and *M. Mohan Vs. State represented by the Deputy Superintendent of Police (2011) 3 SCC 626* as well as the judgments passed by this Court in *Laxmi Vs. State of Haryana and another 2018 (1) RCR (Criminal) 987; Daljeet Singh Vs. State of Punjab 2016 (5) RCR (Criminal) 902;*

5. Per contra, learned State counsel opposes the prayer of the petitioner by contending that the learned trial Court has passed a well-reasoned order based on correct appreciation of evidence available on record, and as such, no intervention is warranted.

OBSERVATIONS AND ANALYSIS

7. I have heard learned counsel for the parties and perused the paper-book with their able assistance.

8. The application under Section 319 Cr.P.C. was moved by the prosecution on the basis of deposition of PW3 Dr. Gaurav Punia, Nodal Officer appointed under the PNDT Act, who filed the complaint on the basis of which the trial Court took cognizance. As per the ratio of law laid down by the Constitution Bench of the Hon'ble Supreme Court in *Hardeep Singh's case* (supra) for summoning a person as an additional accused under Section 319 Cr.P.C., the test which has to be applied 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 present case, Dr. Gaurav Punia, Nodal Officer in his statement as PW3 reiterated the contents of the complaint filed by him, which is corroborated by recovery memo Ex.P6. Further, on enquiry, the accused namely Atul Kumar revealed that he purchased the MTP kits from the petitioner and on the asking of the raiding team, the accused contacted the petitioner from his mobile No.9992392615 to the mobile No.7015899354 of the petitioner for procuring more kits. In response to the phone call of the accused, the petitioner stated that the kits will be arranged on Thursday. Therefore, on the basis of material available before the learned trial Court, it came to the conclusion that a *prima facie* case is made out against the petitioner and summoned the petitioner to face trial as an additional accused under Section 319 Cr.P.C. The word evidence in Section 319 Cr.P.C. means only such evidence as is made before the court, in relation to statement and has produced before the court in relation to document. It is only such evidence that can be taken into account by the court for summoning a person as an additional accused to face trial and not on the basis of material collected during investigation. It is also settled law that the Court has the power to summon a person not named in the FIR or a person

though named in the FIR but has not been chargesheeted or a person who has been discharged

CONCLUSION

9. Keeping in view the aforesaid facts and circumstances, impugned order dated 29.09.2021 passed by the learned trial Court is upheld and consequently, the revision petition stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

February 13, 2024
Pankaj*

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>No</i>