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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1965-2024 (O&M)
Date of Decision: 14.10.2024

Gurpreet Kaur

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gurpreet Singh, Advocate for
Mr. Ramnish Puri, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against impugned order dated 31.08.2024 passed by learned Additional Sessions Judge (Fast Track Court), Amritsar, vide which the application filed by the prosecution-petitioner under Section 319 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [*now Section 358 of Bharatiya Nagarik Suraksha Sanhita, 2023* (for short 'BNSS')] seeking summoning of respondents No.2 & 3 as additional accused to face the trial in FIR No.4

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dated 10.01.2022 under Section 376 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Majitha, District Amritsar, has been dismissed.

2. Learned counsel for the petitioner, *inter alia*, contends that in spite of specific allegations levelled against respondents No.2 & 3, the application filed by the petitioner for summoning them as additional accused under Section 319 Cr.P.C. (*now Section 358 of BNSS*) has been declined. The petitioner, in her statement recorded under Section 164 Cr.P.C. (*now Section 180 of BNSS*) has specifically stated that the car, in which the main accused Simranjit Singh took the petitioner, is owned by respondent No.2 Rajesh Kumar and respondent No.3 Avtar Singh threatened her, as such, learned trial Court should have exercised the power under Section 319 of Cr.P.C. (*now Section 358 of BNSS*) and summon respondents No.2 & 3 as additional accused. Learned trial Court has dismissed the application filed by the prosecution-petitioner under Section 319 of Cr.P.C. (*now Section 358 of BNSS*) for summoning respondents No.2 & 3 as additional accused by means of a non-speaking order and by erroneously ignoring the law laid down by the Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab, (2014) 3 SCC 92*** and ***Sugreev Kumar Vs. State of Punjab and others, 2019 (@) Law Herald (SC) 1047.***

3. *Per contra*, learned State counsel, on instructions from ASI Harjinder Singh, submits that out of total 16 prosecution witnesses, 13 PWs

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have already been examined and the application under Section 319 of Cr.P.C. (*now Section 358 of BNSS*) has been filed just to delay the conclusion of trial. The veracity of the allegations made by the petitioner against respondents No.2 & 3 has been thoroughly examined and during the investigation, they were found innocent and even during trial of the case, no new evidence has come on record to indicate their complicity.

4. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the allegations made by the petitioner against respondents No.2 & 3 completely lack specificity. The improvements made, while deposing before learned trial Court, cannot form the basis for exercising the extraordinary power under Section 319 Cr.P.C. (*now Section 358 of BNSS*). 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 of Cr.P.C. (*now Section 358 of BNSS*). In the absence of any material suggesting existence of more than *prima facie* case available during the course of trial of an offence, the Courts ought to refrain themselves from exercising its discretionary and extraordinary power under Section 319 Cr.P.C. (*now Section 358 of BNSS*). The Constitution Bench of the Hon'ble Supreme Court in **Hardeep Singh's** case (*supra*) has held that the power under Section 319 Cr.P.C. (*now Section 358 of BNSS*) is a

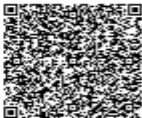


discretionary and extraordinary power. It is to be exercised only on the basis of the material available before the Court during the trial and not because the Magistrate or the Sessions Judge is of the opinion that some other accused/person may also be guilty of committing that offence.

5. In the absence of any credible material, the power under Section 319 Cr.P.C. (*now Section 358 of BNSS*) 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.

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6. In view of the aforesaid facts and circumstances, this Court does not find any merit in the arguments raised by learned counsel for the petitioner. Consequently, the impugned order dated 31.08.2024 passed by learned Additional Sessions Judge (Fast Track Court), Amritsar is hereby upheld. Accordingly, the present revision petition is dismissed with costs of Rs.10,000/- to be deposited with District Legal Services Authority, Amritsar.

[HARPREET SINGH BRAR]
JUDGE

14.10.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No