



CRR-2014-2024

-1-

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

CRR-2014-2024 (O&M)

Decided on: 28.10.2024

Shinderpal Singh @ Shindu

..... Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Amandeep Singh Manaise, Advocate, for the petitioner.

Rajesh Bhardwaj, J.**CRM-41090-2024**

For the reasons mentioned in the application, the same is allowed. The delay of 42 days in filing the appeal is condoned.

Main case

1. The petitioner has approached this Court impugning the order dated 04.06.2024 passed by learned Sessions Judge, Fazilka, vide which application under Section 319 Cr.P.C. filed by respondent No.2-complainant for summoning the petitioner as additional accused in a case FIR No.12 dated 16.01.2023, under Sections 302, 148, 149 IPC, at Police Station Sadar Fazilka, District Fazilka, was allowed.

2. Succinctly facts of the case are that complainant-respondent No.2 lodged the said FIR with the Police, wherein, it was alleged that on 16.01.2023, his Chacha's son Gurjit Singh had gone to Mandi Ladhuke on his Pulsar motorcycle with his friend Vishavjeet Singh @ Vijay to bring some household articles. The complainant also went alongwith them on his motorcycles for his personal work. At about 1/1:30 p.m., his cousin Gurjit Singh and Vishavjit Singh @ Vijay came out of the shop of one Vinod and



CRR-2014-2024

-2-

at that very moment Shinderpal Singh @ Shindu (petitioner), Sikandar Singh and Harjinder Singh armed with dang, Mangat Singh @ Vicky armed with kaapa alongwith two unknown persons came there. Then Shinderpal Singh @ Shindu raised a lalkara to catch hold to Gurjit Singh and teach him a lesson for entering in his land. In the meantime, co-accused caused injuries to Gurjit Singh with their weapons in their hands, where, Harjinder Singh @ Kaku gave three consecutive dang blows on the head of his cousin. After causing injuries, the accused left the place. The injured was shifted to Civil Hospital, Fazilka, where he succumbed to the injuries. Thus, request was made to take legal action against all the accused. On the basis of the complaint, the FIR was registered and the investigation commenced. During investigation, the challan was presented by the Investigating Agency qua the rest of the accused, whereas, the petitioner was kept in column No.2 with the remark that he was yet to be arrested and on his arrest the supplementary challan under Section 173 Cr.P.C. would be filed. Thereafter, the petitioner could not be arrested and lateron he was declared proclaimed offender. However, he was declared innocent without arresting. During the trial the prosecution examined the complainant as PW-2, who deposed before the trial Court regarding the complicity of the petitioner as was alleged in the FIR. Thereafter, an application under Section 319 Cr.P.C. for summoning petitioner to face the trial alongwith co-accused was filed. On hearing, the trial Court accepted the application vide impugned order dated 04.06.2024. Aggrieved by the same, the petitioner is before this Court by way of filing the present revision petition.

3. Learned counsel for the petitioner has vehemently submitted



CRR-2014-2024

-3-

that the petitioner has been falsely implicated in the present case. He submits that only role attributed to the petitioner in the FIR is that he raised a Lalkara to teach lesson to the deceased. However, during the investigation, he was found innocent and thus, he was kept in column No.2. He submits that the prosecution filed an application under Section 319 Cr.P.C. on the ground that the complainant was examined as PW-2 and he has supported the case of the prosecution, wherein, allegations against the petitioner were duly reiterated. It is submitted that except the statement of complainant-respondent No.2, there is no corroborating evidence to substantiate the complicity of the petitioner in the case. He submits that as per the settled proposition of law, summoning under Section 319 Cr.P.C. cannot be in a casual or cavalier manner. 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, learned trial Court has failed to appreciate the same and also the law settled by Hon'ble Supreme Court in case of **Hardeep Singh vs. State of Punjab and others, (2014) 3 SCC 92** and thus, passed the impugned order, which is unsustainable in the eyes of law and deserves to be set aside.

4. Heard.

5. After hearing learned counsel for the petitioner and perusing the record, it is apparent that the complainant had lodged the FIR against the petitioner and co-accused. The petitioner was specifically alleged to have raised Lalkara for catching hold the deceased and to teach him lesson. During the investigation, rest of the accused were arrested and hence, challan was presented against them. However, name of the petitioner was



kept in column No.2 of the challan with the remark that he would not be arrested and supplementary challan would be presented against him on his arrest. Thereafter, the petitioner was declared as proclaimed offender and without being arresting him, he was declared innocent by the Investigating Agency. Thus, the contention raised by counsel for the petitioner that the petitioner was declared innocent after investigation is not substantiated from the proceedings of the investigation. Gurjit Singh was attacked by all the accused in the day light and he scummed to the injuries thereafter. The law settled by Hon'ble Surpeme Court in Hardeep Singh's case (supra), has been misread by counsel for the petitioner as the summoning of the petitioner has been duly made on appreciation of the law settled. The petitioner was declared innocent by the Investigating Agency without carrying out any investigation qua him and even arresting him.

6. To understand the controversy in hand, 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 a fresh, 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 and such power should not be exercised 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. Weighing the facts and circumstances of the present case on the anvil of law settled by the Hon'ble Supreme Court, the Court finds no infirmity in the order dated 04.06.2024 passed by learned Sessions Judge, Fazilka. Hence, the present petition being devoid of any merit, is hereby dismissed

28.10.2024

sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned

:

Yes/No

Whether Reportable

:

Yes/No