

CRR-2730-2022
Date of decision: 29.02.2024

JavedPetitioner

Versus

State of Haryana and anotherRespondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Saurabh Sharma, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

The present revision petition has been filed seeking setting aside of impugned order dated 23.08.2022 passed by the trial Court, whereby, the application filed by the petitioner under Section 319 Cr.P.C. for summoning respondent No.2 as an additional accused has been dismissed.

Learned counsel for the petitioner *inter alia* contends that respondent No.2 has been specifically attributed injury on the head of petitioner in the initial version, on the basis of which, FIR was registered and the medical evidence fully corroborates the ocular version given by the petitioner, as corresponding injury was found on the head of the petitioner and the Investigating Agency has exonerated respondent No.2 without any justifiable cause and the petitioner has appeared before the learned trial Court as PW-1. He has again reiterated the specific role attributed to respondent No.2. Moreover, the proximity of the medico legal report which was conducted on the same day, would rule out any false implication and the learned trial Court has wrongly relied upon the investigation conducted by the police and has

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overlooked the ocular version and medical evidence available on record.

Having heard learned counsel for the petitioner and after perusing the record, it transpires that the Investigating Agency has concluded that after detailed investigation, out of 17 accused named by the petitioner, only 08 were found involved in the alleged incident and others have played no role, rather, they were trying to pacify the accused persons and were pressing upon them not to quarrel with the complainant and the allegation of firing and use of vehicle as alleged by the complainant was not found to be true. Even the presence of respondent No.2 is admitted by the Investigating Agency at the place of occurrence but he has not caused any injury as per the investigation. Moreover, the weapon of offence i.e. *farsa* was recovered from the disclosure statement of Rajjak and he has confessed that he has used the same weapon in inflicting injuries on the person of complainant.

This Court is of the considered opinion that the learned trial Court has passed a well reasoned order. The material available on record, does not satisfy the crucial test in view of the ratio of law laid down in '**Hardeep Singh Vs. State of Punjab and others**' 2014 (3) SCC 92, i.e. the test of 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 absence of any material suggesting existence of more than *prima facie* case available during the course of trial of an offence, Courts ought to refrain themselves from exercising its discretionary and extraordinary power under Section 319 Cr.P.C. The Constitution Bench of the Hon'ble Supreme of India in ***Hardeep Singh's case (supra)*** has held that the power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised

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only on the basis of the material available before the Court during a 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.

The trial Court must evaluate the material against the person 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 material, the power under Section 319 Cr.P.C. 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.”

In view of the above, no ground is made out to interfere in the finding given by the learned trial Court, and thus, the present revision petition stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

29.02.2024
Neha

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No