

**CRR-1598-2023**

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**104+219 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRR-3304-2019(O&M)
Date of decision: 09.08.2024**

Jaspal Singh

...Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRARPresent: Mr. Gagan Oberoi, Advocate
for the petitionerMr. Arshdeep Bhullar, Advocate
for the complainant.

Mr. Sandeep Kumar, DAG, Punjab

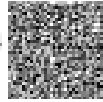
HARPREET SINGH BRAR, J.(Oral)**CRM-18762-2024**

The present application is preferred under Section 482 Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') seeking to place a copy of the judgment dated 23.11.2023 passed by learned Additional Sessions Judge, Fast Track Special Court, Ludhiana, on the record as Annexure P-12.

For the reasons mentioned in the application the same is allowed and the judgment dated 23.11.2023 passed by learned Additional Sessions Judge, Fast Track Special Court, Ludhiana, is taken on the record as Annexure P-12.

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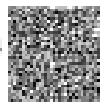
1. The present revision petition has been preferred against

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impugned order dated 29.11.2019 passed by the learned Additional Sessions Judge, Ludhiana whereby the application moved by the prosecutrix under Section 319 Cr.P.C. to summon the petitioner as an additional accused in the case stemming from FIR No. 71 dated 14.04.2017 registered under Section 363 IPC at Police Station Shimlapuri, has been allowed.

2. Briefly, the facts are that on 26.03.2017, the prosecutrix did not return home from Labourmandi, Dabchak. Consequently, the mother of the prosecutrix filed FIR(supra). The petitioner was a part of the police team that investigated the matter. On 24.06.2017, the petitioner, along with other police officers, was able to trace the prosecutrix and arrest the accused-Pawan Kumar. The prosecutrix was taken before the learned Judicial Magistrate to record her statement dated 24.02.2017(Annexure P-3) under Section 164 Cr.P.C., wherein she stated that she got married to Pawan Kumar and wants to reside with him. However, subsequently another statement under Section 164 Cr.P.C. was recorded on 18.07.2017 (Annexure P-9) wherein the prosecutrix stated that she had made the previous statement under pressure from the petitioner.

3. Learned counsel for the petitioner *inter alia* contends that the petitioner has been unjustly implicated in the present case. There are no specific allegations against the petitioner in FIR (surpa) that would merit his summoning as an additional accused under Section 319 Cr.P.C. Moreover, sanction under Section 197 Cr.P.C. ought to have been obtained before taking cognizance of the offence qua the petitioner as he is a public servant.

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Further, the learned trial Court has wrongly relied upon the second statement dated 18.07.2017 (Annexure P-9) in order to summon the petitioner as an additional accused as the petitioner has done nothing but recover the prosecutrix in line with his duty as a police officer. Learned counsel places reliance on the judgment rendered by the Hon'ble Supreme Court in ***Michael Machado vs. Central Bureau of Investigation 2000(1) Apex Court Judgments 404.***

5. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the prosecutrix has made bald assertion in her second statement recorded under Section 164 Cr.P.C(Annexure P-9). She alleges that the petitioner, along with other co-accused, took the prosecutrix to Sherpur Chowk where Pawan was already present. The prosecutrix was then taken by Pawan to his native village. It was also stated that the petitioner coaxed her into stating before the Magistrate that she is married to Pawan and later took her to Jalandhar while telling her that she will be freed in two days. The prosecution has been unable to indicate any motive on part of the petitioner in alleging the offence as claimed by the prosecutrix. In fact, the petitioner has duly followed the procedure by promptly presenting the prosecutrix before the Magistrate in order to record her statement under Section 164 Cr.P.C.

6. Further, a perusal of the judgment dated 23.11.2023 passed by learned Additional Sessions Judge, Fast Track Special Court, Ludhiana(Annexure P-12) indicates that the main accused stands acquitted of



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the charges framed against them. Further still, it is settled law that 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 Cr.P.C. 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. The Constitution Bench of the Hon'ble Supreme Court in ***Hardeep Singh vs. State of Punjab 2014(1) RCR (Criminal) 623*** has held that the power under Section 319 Cr.P.C is a discretionary and extraordinary power. As such, this power has 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.

7. Discussing the scope of Section 319 Cr.P.C., the Hon'ble Supreme Court in ***Hardeep Singh's case (supra)***, speaking through Justice B.S. Chauhan, has observed as follows:

"105. Power under Section 319 Cr.P.C. 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.

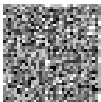


106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the Court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more 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 un rebutted, would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. 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 Cr.P.C. to form any opinion as to the guilt of the accused."

This ratio of law was reiterated by a two Judge bench of the Hon'ble Supreme Court in the case of ***Sagar Vs. State of Uttar Pradesh and another 2022(2) R.C.R.(Criminal) 344.***

8. Recently, a two Judge bench of the Hon'ble Supreme Court in ***Juhru and others vs. Karim and another 2023 AIR (Supreme Court) 1160*** examined the scope of section 319 Cr.P.C and speaking through Justice Surya Kant, observed as follows:

"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 quo 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



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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.”

9. In view of the above discussion, the present petition is allowed and the impugned order dated 29.11.2019 passed by the learned Additional Sessions Judge, Ludhiana is set aside.
10. Pending miscellaneous application(s), if any, shall also stand disposed of.

09.08.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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