



CRM-M-55056-2024

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through ATM without her permission and on asking, he used to beat her. The cousin brother of her husband hurled abuses and extended threats to kill her on mobile phone. Thereafter, on 23.02.2020, her husband brought the complainant and his son to village Chorkarsa at his home and went away, then at around 12:00 Noon or 01:00 P.M., when the complainant was resting in her room, Rajesh came and tried to attempt rape upon her and when she refused, he went outside the room and narrated the whole story to his family members, as a result of which, they started beating the complainant and thrown her out of the matrimonial home. Consequently, the criminal justice machinery was set in motion by registration of FIR in question.

3. Learned counsel for the petitioner *inter alia* contends that respondents No.2 to 7 were declared innocent without proper and fair investigation. The victim herself appeared as PW-2 and levelled specific allegations against the private respondents. Subsequently, an application under Section 319 Cr.P.C. was filed by the prosecution to summon respondents No.2 to 7 as additional accused, however, the same was unfairly dismissed by the learned Court below vide impugned order dated 11.09.2023 which has been passed in violation of the ratio of law laid down in '**Hardeep Singh Vs. State of Punjab and others**' 2014 (3) SCC 92. Thereafter, the petitioner has challenged the impugned order dated 11.09.2023 by way of filing criminal revision and the same was also dismissed by the learned Additional Sessions Judge, Karnal vide order dated 22.07.2024. The offence committed against the victim is heinous in nature and must be taken with utmost seriousness to create a deterrent effect.

4. Learned State counsel submits that the petitioner has filed the application under Section 319 Cr.P.C. at the fag end when the trial is fixed for



defence evidence. Further, the private respondents are the family members of the main accused and are being entangled in FIR in question without there being any cogent evidence with respect to their complicity.

5. Having heard learned counsel for the parties and after perusing the record, this Court finds no infirmity in the impugned order passed by the Court below. A perusal of the record clearly indicates that the impugned order was passed by the learned trial Court on the ground that there is no substantive evidence against the private respondents who are sought to be summoned as an additional accused under Section 319 Cr.P.C. Moreover, there are no specific allegations against the private respondents and all the allegations levelled against them are general in nature, which are not corroborated by any other material or medical evidence. As such, the private respondents cannot be summoned by invoking the power under Section 319 Cr.P.C. only on the bald allegations made by the petitioner.

6. 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's case (supra)***, i.e. the test of there being more than a *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.

7. 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 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.

8. 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.”

9. 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 petition stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

06.11.2024
Neha

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