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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

CRR-2861-2023 (O&M)  
Date of Decision: 06.08.2024

Man Singh

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Pankaj Bali, Advocate  
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

Mr. Vijay Kumar, Advocate  
for respondent No.2.

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HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against impugned order dated 23.10.2023 passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, vide which the application filed by the petitioner for summoning of respondent No.2 as additional accused to face trial in FIR No.42 dated 26.10.2022 under Sections 304-B, 498-A, 34 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station GRP Jagadhri, District GRP Ambala Cantt, was dismissed.

2024:PHHC:100912



2. Learned counsel for the petitioner, *inter alia*, contends that the petitioner specifically named respondent No.2 in the complaint filed by him and specific allegations were levelled against her for committing cruelty towards his deceased daughter Simran due to demand of dowry and abetting her to commit suicide. However, while presenting the final report under Section 173 Cr.P.C., name of respondent No.2 was wrongly kept in column No.2. Learned Additional Sessions Judge has dismissed the application filed by the petitioner under Section 319 Cr.P.C. through learned Public Prosecutor, for summoning respondent No.2 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, assisted by learned counsel for respondent No.2, supports the impugned order passed by learned trial Court, by contending that the same has been passed after appreciation of the evidence brought on record.

4. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that thorough investigation was conducted by the jurisdictional police authorities and respondent No.2 was joined in the investigation and it was found that on the

2024:PHHC:100912



date of occurrence, she had gone to the house of her elder brother and the deceased or her parents never gave any complaint against her. Even no evidence was brought on record to show that she tortured the deceased. Therefore, she was declared innocent and while submitting the final report under Section 173 Cr.P.C., her name was kept in column No.2. Moreover, the improvements made, while deposing before learned trial Court, cannot form the basis for exercising the extraordinary power under Section 319 Cr.P.C. 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's** case (*supra*) has held that the power under Section 319 Cr.P.C 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. 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.*

6. In view of the aforesaid facts and circumstances, this Court does not find any merit in the arguments raised by learned counsel appearing for the petitioner. Consequently, the impugned order dated 23.10.2023 passed by learned Additional Sessions Judge, Yamuna Nagar at Jagadhri, is upheld. Accordingly, the revision petition is dismissed.

[ HARPREET SINGH BRAR ]  
JUDGE

06.08.2024  
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No