



CRR-81-2025

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

CRR-81-2025 (O&M)
Decided on: 15.01.2025

Kamlesh Yadav

..... Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Prateek Rathee, Advocate and
Mr. Shwas Bajaj, Advocate, for the petitioner.

Rajesh Bhardwaj, J.

CRM-1237-2025

For the reasons mentioned in the application, the same is allowed. The delay of 06 days in filing the appeal is condoned.

Main case

1. The petitioner has approached this Court impugning the order dated 09.10.2024 passed by learned Additional Sessions Judge, Gurugram, vide which, order dated 05.07.2024 passed by learned JMIC, Pataudi allowing the application under Section 319 Cr.P.C. filed by the petitioner-complainant for summoning respondent No.2-Rajesh @ Tillu as additional accused in a case FIR No.141 dated 18.04.2015, under Sections 147, 341, 506, 509 IPC, at Police Station Bilaspur, District Gurugram, was set aside.

2. Succinctly facts of the case are that FIR in the present case was lodged on the statement of petitioner Kamlesh Yadav, wherein, it was alleged that on 18.04.2015 at about 1:30 p.m., when she was alone at home, then about 15 men and women suddenly attacked their house. They started pelting stones at their house and were abusing them. She dialed at No.100



and thereafter, the Police arrived, however, the attackers continued to pelt stones and threat them. Twelve persons were named as assailants. Request was made to take legal action against all the accused person. On the registration of the FIR, the investigation commenced. The Investigating Agency filed the challan against five accused, whereas, rest of the accused named in the FIR were declared innocent. Learned trial Court framed charges and trial commenced. During the course of trial, the complainant was examined as PW-4, who reiterated her allegations made in the FIR and thus, application under Section 319 Cr.P.C. was filed for summoning respondent No.2 Rajesh @ Tillu to face trial alongwith the accused. Learned trial Court vide its order dated 05.07.2024 accepted the same by directing the additional accused Rajesh @ Tillu to face the trial alongwith the accused. This order dated 05.07.2024 was assailed by respondent NO.2 by way of filing revision petition before learned Additional Sessions Judge, Gurugram. Learned Revisional Court after hearing both the sides, accepted the revision petition vide impugned order dated 09.10.2024 and thus, set aside the order dated 05.07.2024 passed by leaned trial Court. Hence, aggrieved by the same, the petitioner has approached this Court by way of filing the present revision petition.

3. Learned counsel for the petitioner has vehemently submitted that the petitioner has been specifically named by respondent No.2 as one of the accused, who were the perpetrators of the offence committed on 18.04.2015. He submits that the Investigating Agency filed the challan on 15.09.2015 and illegally declared respondent No.2 as innocent. It is submitted that during the trial Suresh Chand has been examined as PW-3



and complainant- Kamlesh Yadav has been examined as PW-4 and during their examination-in-chief both have specifically deposed regarding the complicity of respondent No.2 and the specific injuries caused by them. He submits that CCTV footage provided by the petitioner also proved the complicity of respondent No.2 and thus, he was illegally declared innocent by the Investigating Agency. He submits that learned trial Court had rightly exercised its jurisdiction by accepting the application filed under Section 319 Cr.P.C., however, learned Revisional Court has miserably failed to appreciate the law settled and thus, has illegally set aside the well reasoned order passed by learned trial Court. 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 Revisional 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 alleged occurrence had taken place on 18.04.2014. Trial is in progress from the last about 10 years. In the initial version, the complainant had named 15 persons as accused, however, during the investigation, the Investigating Agency found supporting material only regarding 05 accused and thus, rest of the accused were declared innocent. Though Suresh Chand and the complainant who have been examined as PW-3 and PW-4, named respondent No.2, but there is no substantial



evidence on record for complicity of respondent No.2, which can persuade the Court to summon him to face the trial as an additional accused. Simple oral allegations are not sufficient enough for summoning of any additional accused.

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 afresh, 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 09.10.2024 passed by learned Additional Sessions Judge, Gurugram. Hence, the present petition being devoid of any merit, is hereby dismissed

15.01.2025			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No