



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-142-2025
DECIDED ON: 22.01.2025

RAJ KUMAR

.....PETITIONER

VERSUS

STATE OF HARYANA & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sahil Dev Singh Bali, Advocate with
Ms. Simmy and Mr. Rajinder Yadav, Advocates
for the petitioner.

Mr. Chetan Sharma, DAG, Haryana

SANDEEP MOUDGIL, J (ORAL)

1. The present revision petition has been directed against the impugned order dated 28.11.2024, wherein the application moved by the petitioner under Section 358 BNSS,2023, for summoning the respondents no.2 to 5 have been dismissed.
2. The brief facts of the case unfolds that the petitioner got registered an FIR No. 188 dated 04.07.2023 under sections 323, 506, 34 IPC at Police Station Siwani, District Bhiwani, Haryana(Annexure P-1) wherein the deceased namely Sardara after the assault was taken to Hospital at Hisar and subsequently was referred to PGIMS, Rohtak where he died on 06.07.2023 and thereafter section 302 IPC was added in the present FIR. Thereafter, co-accused Deepak, Neeraj and Badal (Juvenile) were arrested however, Respondents No. 2 to 5 were never

arrested despite adding of Section 302 IPC wherein they were specifically named and attributed roles. Also, the investigating agency submitted challan on 04.12.2023 and did not arrest the respondents. Petitioner was examined as PW-19 wherein he specifically named the private respondents with their specific roles and attributions and thereafter immediately moved an application under section 358 BNSS, 2023 which was dismissed vide order dated 28.11.2024.

3. Counsel for the petitioner contends that the trial court has erred in dismissing the application under section 358 BNSS, 2023 by placing reliance upon judgment passed by the Apex Court in “***Hardeep Singh vs State of Punjab 2014 (1) RCR (CrI) 623 (SC)***” wherein it has been held that power under Section 319 Cr.P.C., is discretionary and extraordinary, which should be exercised sparingly and only in those cases where the circumstances of the case so warrant, and that 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.

4. He further contends that the trial court has erred in dismissing the application without taking into consideration the present FIR, Challan and the deposition of the complainant-petitioner PW-19 wherein specific names of Respondents No. 2-5, role and attribution has been stated.

5. Per contra, counsel for the state contends that the story put forth by the petitioner is concocted one and police after thorough investigation has rightly not taken any action against the proposed accused-respondents. He further argues that challan stands presented wherein it was mentioned that the persons sought to be summoned were found innocent.

6. Heard, learned counsel for the respective parties at length.
7. Before proceeding with the matter, it is apposite to reproduce what has been contemplated in Section 358 BNSS, 2023, which reads as under:-

“...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.”

8. The Constitution Bench of the Supreme Court in “**Hardeep Singh vs. State of Punjab, (2014) 3 SCC 92**,” while illuminating the scope of Section 319 Cr.P.C/ Section 358 BNSS, 2023 Cr.PC, laid down that:-

“105. Power under Section 319 CrPC 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](#) CrPC. In [Section 319](#) CrPC 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 CrPC](#) to form any opinion as to the guilt of the accused.” .

9. In **Sukhpal Singh Khaira vs. The State of Punjab, (2023) 1 SCC 289** , the Supreme Court succinctly explained the powers bestowed on the Court under Section 319 CrPC(now section 358 BNSS,2023) and ruled that:-

“15. At the outset, having noted the provision, it is amply clear that the power bestowed on the Court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the Court, if it appears to the Court that such evidence points to any person other than the accused who are being tried before the Court to have committed any offence and such accused has been excluded in the charge sheet or in the process of trial till such time could still be summoned and tried together with the accused for the offence which appears to have been committed by such persons summoned as additional accused.”

10. The Constitution Bench refreshed the guidelines which, the competent court, must follow while exercising powers under [Section 319 CrPC](#) (now Section 358 BNSS, 2023) and further ruled that:-

(i) if the competent court finds evidence or if application under [Section 319 Cr.P.C.](#) is filed, regarding involvement of any other person in committing the offence based on evidence “recorded at any stage in the trial” before passing of the order on acquittal or sentence, it shall pause the trial at that stage and the Court shall proceed to decide the fate of the application under [Section 319 Cr.P.C.](#);

(ii) if the Court decides to summon an accused under Section 319 Cr.P.C., such summoning order shall be passed before proceeding further with the trial in the main case and depending upon the stage at which the order is passed, the Trial Court shall apply its mind to

the fact as to whether such summoned accused is to be tried along with other accused or separately; and

(iii) if the power under [Section 319](#) Cr.P.C. is not invoked or exercised in the main trial till its conclusion and if there is a split up case, such power can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated trial).

11. After analyzing the *dicta* of the Constitution Benches in **Hardeep Singh** (supra) and **Sukhpal Singh Khaira** (supra), the Supreme Court in **Juhru v. Karim, 2023 SCC OnLine SC 171**, unequivocally held that:-

“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 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 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 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.”

12. It, thus, comes out that the power of summoning under Section 358 BNSS, 2023 not to be exercised in a routine manner and the existence of more than a *prima facie* case is *sine qua non* to summon an additional accused and with a view to prevent the frequent misuse of power to summon. Ordinarily, the Court should also discourage itself from summoning the person in the absence of any

credible evidence, the power under Section 358 BNSS, 2023, ought not to be invoked.

13. Coming back to the present case in hand, this Court has examined the impugned order dated 28.11.2024 very minutely, wherein the trial court has specifically dealt with the issue as to whether there is any direct role attributed to Respondents no. 2 to 5, and observed that during investigation, the matter was investigated thoroughly by higher police officials and during the course of investigation they were not found involved in commissioning of the offence in question added with the fact that PW-19 petitioner-complainant had in a very casual manner levelled the allegations upon the Respondents no.2 to 5 without submitting any iota of evidence.

14. In this context, reliance can be placed upon **“Rajender Singh Vs State of U.P & Anr III (2007) C.C.R. 290 (SC)”** wherein the Apex court has held that:-

“As I see it, the words are plain and the meaning clear. When in the course of the inquiry or trial, it appears to the court from the evidence that a person, not arrayed as an accused, appears to have committed any offence for which that person could be tried together with the accused, the court may proceed against that person. Surely, it must appear to the court from the evidence that someone not arrayed as an accused, appears to have committed an offence. But it noted, the court need not be satisfied that he has committed an offence. It need only appear to it that he has committed an offence. In other words, from the evidence it need only appear to it that someone else has committed an offence, to exercise jurisdiction under Section 319 of the Code or not. Even then, it has a discretion not to proceed, since the expression used as 'may' and not 'shall'. The legislature apparently wanted to leave that discretion to the trial court so as to enable it to exercise its jurisdiction under this section. The expression 'appears' indicates an application of mind by the court to the evidence that has come before it and then taking a decision to proceed under Section 319 of the Code or not. With great respect, I see no reason to describe the power as an extra ordinary power

or to confine the exercise of it only if compelling reasons exist for taking cognizance against any other person against whom action has not been taken. After all, the section only gives power to the court to ensure that all those apparently involved in the commission of an offence are tried together and none left out I see no reason to curtail this power of the court to do justice to the victim and to the society. It appears to me that it is left to the judicial discretion of the court, judicially trained, to decide to proceed or not to proceed against a person in terms of Section 319 of the Code”

15. In view of the facts of the instant case coupled with the spectrum of law discussed hereinabove by the Apex court, the present revision petition does not demand any interference of this court in the light of the fact that no sufficient evidence is available sans respondents no. 2 to 5 therefore the order dated 28.11.2024 does not suffer from any perversity or illegality.

16. Hence, the present petition stands dismissed being devoid of any merits with no order as to costs.

(SANDEEP MOUDGIL)
JUDGE

22.01.2025
Meenu

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