

119

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARHCRR-88-2025 (O&M)
DECIDED ON: 16.01.2025

SUMAN

.....PETITIONER

VERSUS

STATE OF HARYANA & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Munish Gupta, Advocate
for the petitioner.SANDEEP MOUDGIL, J (ORAL)CRM-1401-2025

This application has been filed under Section 5 of the Limitation Act for condonation of delay of 23 days in filing the appeal.

For the reasons mentioned in the application and in view of the submission made by learned counsel for the applicant, the application is allowed and delay of 23 days in filing the appeal is condoned.

Main case

1. The present revision petition has been directed against the impugned order dated 19.09.2024, wherein the application moved by the petitioner under Section 319 Cr.P.C., for summoning the respondents no.2 and 3 as additional accused has been dismissed.

2. The brief facts of the case unfolds that the accused including Respondents no.2 and 3 compelled and abetted Bhushan Saini (since deceased) to commit suicide wherein FIR No. 0087 dated 18.02.2020 under sections 306, 34 of IPC was registered at Police Station City Narnaul, District Mahendergarh. In investigation, the police authorities have wrongly declared

Respondents no. 2 and 3 as innocent wherein it is apparent from the FIR that

the deceased informed respondents no. 2 and 3 regarding he being harassed and tortured by Rekha Saini and she was constantly supported by respondents no.2 and 3 in this act and being fed up with this mental harassment, the deceased ended his life by strangulating himself on 19.09.2019.

3. Counsel for the petitioner contends that the trial court has erred in dismissing the application under section 319 Cr.P.C by placing reliance upon judgment passed by the Apex Court in “ **Hardeep Singh vs State of Punjab 2014 (1) RCR (Crl) 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. He further contends that the bare reading of FIR, WhatsApp chat and statement of PW-1 clearly depicts that Respondent no.2 and 3 were actively involved in connivance with main accused Rekha for causing mental agony to the Deceased-Bhushan and therefore the same cannot be said to be suicide rather a pre-planned murder.

4. Heard, learned counsel for the Petitioner.

5. Before proceeding with the matter, it is apposite to reproduce what has been contemplated in Section 319 CrPC, 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.

... ..”

6. 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.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.”

7. In **Hardeep Singh** (supra), the Supreme Court eloquently held that the word “evidence” in [Section 319 CrPC](#) has to be broadly understood and thus materials which have come before the Court, in course of enquiry, can

- (i) corroboration of evidence recorded by Court after commencement of trial;
- (ii) for exercise of power under [Section 319](#) Cr.P.C.

8. 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 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.”

9. The Constitution Bench refreshed the guidelines which, the competent court, must follow while exercising powers under [Section 319](#) CrPC 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).

10. 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.”

11. It, thus, comes out that the power of summoning under Section 319 Cr.P.C is 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 319 CrPC, ought

12. Coming back to the present case in hand, this Court has examined the impugned order dated 19.09.2024 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 and 3, which crystallizes from the fact that the elder brother of the deceased had filed an FIR stating that his younger brother was suffering from depression for 5-6 months and was undergoing treatment from Jaipur wherein the Doctor had advised to admit the deceased under psychiatric case as he had high suicidal intent. The trial court in para 11 of its judgment has observed that:-

“11. No new evidence, in addition to evidence already on file, has adduced on file on the basis of which it can be inferred that the evidence recorded during the course of argument is sufficient in order to summon them under Section 319 Cr.P.C. On this point, reliance can be placed upon law laid down in Harjap Singh Vs State of Punjab and another, 2020(4) RCR(Criminal) 505 (P& H).”

13. In view of the above, 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 and 3 therefore the order dated 19.09.2024 does not suffer from any perversity or illegality.

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

(SANDEEP MOUDGIL)
JUDGE

16.01.2025
Anuradha

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