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

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Date of Decision: 06.02.2025

Kamal Kumar @ Kamal @ Buntty

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Parvesh Jaglan, Advocate, for the petitioner.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for quashing of the impugned order dated 11.11.2024 (Annexure P-7) passed by learned Additional Sessions Judge, Jind in CRR/29/2024 titled as Kamal vs. State of Haryana and another, whereby the revision petition filed by the petitioner, has been dismissed and for quashing of the order dated 17.07.2024 passed by learned JMIC, Jind (Annexure P-6) in FIR No.85, dated 09.02.2018 registered under Sections 166, 323, 34, 342, 363, 365, 506 IPC, at Police Station City Jind, whereby, request of the petitioner summoning the additional accused i.e. respondent No.2 under Section 319 Cr.P.C. has been declined.

2. Brief facts of the case are that petitioner is the complainant on whose behest, the FIR was registered. It was alleged by the complainant-petitioner that on 02.06.2017, at about 11:15 p.m., he came to Jind Junction to departure his friend's family and after purchasing two platform tickets, he was waiting for train. Then HC Narender Yadav and another police official (who could be identified on appearing) came there in drunkened condition and starting questioning him. They forcible took the complainant on their motorcycle and brought to the Police Post. They started misbehaving with him and his clothes were removed and his hands and legs were tied. They used filthy language with him. Despite repeated request, neither they



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allowed him to go home nor allowed him to contact his family members. It was alleged that accused No.1, 2 and 4 had consumed liquor all night and under the influence of liquor, they gave beatings to him. It was also alleged that accused No.3 was solely responsible being Chowki Incharge as he did not take any action against three co-accused. The complaint filed under Section 156(3) Cr.P.C. was sent to the Police and the FIR was registered. On completion of the investigation, challan was presented under Section 173 Cr.P.C., wherein, respondent No.2-ESI Hari Kishan was declared innocent. During the trial, the complainant appeared as PW-1 and levelled allegations against respondent No.2 and thus, application under Section 319 Cr.P.C. was filed for summoning respondent No.2 to face the trial alongwith the co-accused. However, both the Courts i.e. the trial Court and the Revisional Court declined the same vide impugned orders dated 17.07.2024 and 11.11.2024, respectively. Hence, aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

3. Learned counsel for the petitioner has vehemently submitted that he sought the information under the RTI Act, from which it is apparent that respondent No.2 was present at the time of occurrence in the Police Chowki. He submits that the petitioner duly alleged the complicity of respondent No.2, however, the Investigating Agency has deliberately declared him innocent by putting him in Coloum No.2 in the final report under Section 173 Cr.P.C. He submits that initially the investigation was carried out in a tainted manner which the petitioner assailed by way of filing CRM-M-44117-2018 and the same was disposed of vide order dated 13.05.2019 by this Court. Thereafter, the petitioner filed an application



under Section 173(8) Cr.P.C. before learned trial. Court. He submits that observations of both the Courts that the petitioner made improvements in the statement while deposing before the trial Court, are not sustainable in the eyes of law, as there are ample evidence against respondent No.2 regarding his complicity in the commission of offence against the petitioner. He, thus, submits that the view taken by both the Courts i.e. the trial Court and Revisional Court, is against the evidence on record and the law settled. 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, both the Courts below have failed to appreciate the same and thus, rejected the application/revision petition under Section 319 Cr.P.C. filed by the petitioner in a mechanical manner. He has submitted that learned Courts below have failed to appreciate the law settled by Hon'ble Supreme Court in case of **Hardeep Singh vs. State of Punjab and others, (2014) 3 SCC 92** and hence, the impugned orders dated 17.07.2024 and 11.11.2024 declining the application/revision petition under Section 319 Cr.P.C. filed by the petitioner-complainant for summoning the respondent No.2, deserves to be set aside.

4. After hearing learned counsel for the petitioner and perusing the record, it is deciphered that the petitioner filed a complaint under Section 156(3) Cr.P.C. before learned Magistrate, which was referred to the Police by learned Magistrate and thus, the FIR was registered. The record would show that challan was presented under Section 173 Cr.p.C. and on the request of the petitioner, the matter was sent for further investigation. The application filed under Section 190 Cr.P.C. was accepted qua two police



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officials, however, the same was rejected for third official. From the investigation, it was found that respondent No.2 had come in the morning and at the time of alleged offence he was not present. The contention of the petitioner regarding registering Roj Namcha had already been appreciated by both the Courts.

5. To understand the controversy in the case, 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.”

6. The Constitutional Bench of Hon'ble Supreme Court in Hardeep Singh's case (supra) has held that power under Section 319



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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 from the evidence led before the Court and such power should be exercised not 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.

7. From facts and circumstances of the present case, it is apparent that there was no material before the trial Court and the revisional Court, which could be termed as sufficient or more than *prima facie* case made out for framing of charge for summoning of additional accused as prayed for. Hon'ble Supreme Court has held that the Court should refrain from exercising its power under Section 319 Cr.P.C. in a mechanical manner. It has been held that power under Section 319 Cr.P.C. should be used sparingly in exceptional circumstances.

8. Weighing the facts and circumstances of the present case on the anvil of law settled by the Hon'ble Supreme Court, this Court is of the opinion that the trial Court as well as the revisional Court have rightly declined the application/revision petition for summoning the respondents-accused, as it would be nothing but a futile exercise and would defeat the ends of justice. Resultantly, the present petition is dismissed being devoid of any merit.

(RAJESH BHARDWAJ)
JUDGE

06.02.2025

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Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No