



CRR-153-2025 (O&M)

113

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-153-2025 (O&M)

Date of Decision: 28.01.2025

Lekh Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present:-. Ms. Kiranjeet Kaur, Advocate
for the petitioner

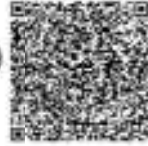
Mr. Devinder Bir Singh, Sr. DAG Punjab

Mr. Kuldip Singh, Advocate
for the complainant

KIRTI SINGH, J.(Oral)

1. The instant revision petition has been filed under Section 438 of BNSS, 2023 read with Section 528 of BNSS, 2023 for quashing/setting aside the impugned order dated 17.12.2024 passed by learned Additional Sessions Judge, Ferozepur in case SC/219/2024 tiled as *State vs. Sukhdev Singh @ Sukha Singh* vide which the application moved under Section 319 Cr.P.C. for summoning the petitioner as '**Additional Accused**' has been allowed.

2. The facts in brief are that the FIR No. 81 dated 12.05.2024 under Sections 363, 366-A, 34 IPC registered at Police Station Guruharshai was registered on the statement of complainant alleging that co-accused namely Sukhdev Singh had enticed away her daughter in connivance with Balwinder

**CRR-153-2025 (O&M)**

Section 376 IPC and under Section 4 of POCSO Act, 2012 were added vide rapat No.34 on 16.05.2024 against the co-accused and 27.11.2024 challan has been presented against the accused namely Sukhdev Singh and other co-accused namely Balwinder Singh has been kept in column No.2 of the challan. After presentation of challan trial has been commenced. Thereafter the prosecution moved an application under section 319Cr.P.C seeking summoning of the present petitioner in the main trial. Learned Additional Sessions Judge, Ferozepur vide its impugned order dated 17.12.2024 allowed the application of the prosecution and summoned the present petitioner to face the trial as additional accused.

3. Learned counsel for the petitioner *inter alia* submits that the petitioner has neither any role nor any involvement in the alleged offence. The petitioner was not even named in the FIR as well as challan. The victim was in a consensual relation with the co-accused namely Sukhdev Singh but the present petitioner has been implicated in the present case only due to his relation with him. He further submits that no case is made out against the petitioner and the impugned order dated 17.12.2024 to summon the petitioner is against law and deserves to be set aside.

4. I have heard learned counsel for the petitioner and perused the material available on record.

5. Before proceeding further, it is pertinent to discuss the perspicuous observations made by the Hon'ble Supreme Court in some of its recent judgements. Discussing the scope of Section 319 Cr.P.C., the Constitution Bench of Hon'ble Supreme Court in case titled ***Hardeep Singh Vs. State of Punjab, SC 2014(1) RCR (Criminal) 623*** has laid down that:



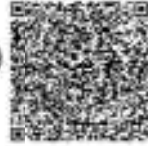
CRR-153-2025 (O&M)

"105. Power under Section 319 Cr.P.C. 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 unrebutted, would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. 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 Cr.P.C. to form any opinion as to the guilt of the accused."

6. Hon'ble the Supreme Court in ***Brijendra Singh and Others Vs. State of Rajasthan, (2017) 7 SCC 706***, while summing up the ratio as laid down in Hardeep Singh's case (supra) has held as under:

"Power under Section 319 Cr.P.C. can be exercised by the trial Court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial Court finds that there is some 'evidence' against such a person on the basis of which evidence it can be gathered that



he appears to be guilty of offence. The 'evidence' herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect - of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima-facie opinion which is to be formed requires stronger evidence than mere probability of his complicity."

7. Hon'ble the Supreme Court later in 2019 relying on ***Hardeep Singh (supra) held in Periyasami and Others Vs. S.Nallasamy (2019) SCC Online SC 379*** that:

"The additional accused cannot be summoned under Section 319 of the Code in casual and cavalier manner in the absence of strong and cogent evidence. Under Section 319 of the Code additional accused can be summoned only if there is more than prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of conclusion of the trial convicting the accused."



CRR-153-2025 (O&M)

8. Recently Hon'ble the Supreme Court in case of ***Juhru & Ors. Versus Karim & Anr. 2023 AIR (Supreme Court) 1160*** observing the scope of section 319 Cr.P.C held that:

“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 quo 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.”

9. There is a statement of victim under Section 161 Cr.P.C. wherein she leveled specific allegations against Lekh Singh alias Lekhu that he remained present with Sukhdev Singh alias Sukha and Balwinder Singh throughout occurrence and also acted as a guard with Sukhdev Singh and Balwinder Singh, who committed rape upon her but no investigation has been carried out by the Investigating Officer. Though, there is statement under Section 164 Cr.P.C. on record but victim stated that at that time, she was pressurized and forced under threat. No doubt, if the statement given in her examination-in-chief constitutes an offence then the Court can exercise power under Section 319 Cr.P.C. The law no doubt provides that if any sufficiency of satisfying evidence is brought on record

the person can be summoned as an additional accused.



CRR-153-2025 (O&M)

10. In view of the seriousness of the offence, this Court finds no illegality or perversity in the impugned orders passed by learned trial Court.
11. Accordingly, present revision petition is dismissed being bereft of merit.

(KIRTI SINGH)
JUDGE

28.01.2025
reena

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