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

CRM-M-9570-2025

Date of decision: 19.02.2025

Ritika Kapoor

....Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. Amritpal Singh Maan, Advocate
for the petitioner.

Mr. Subhash Godara, Addl.A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking quashing of order dated 14.11.2023 passed by the learned Judicial Magistrate 1st Class, Malerkotla, whereby, the application filed by the petitioner under Section 319 Cr.P.C. to summon respondent No.2, has been dismissed and further seeking quashing of order dated 06.08.2024 passed by the learned Sessions Court, Sangrur, whereby, CRR No.01 of 2024 preferred by the petitioner against the order dated 14.11.2023 (Annexure P-5) was dismissed.

2. Briefly, the facts are that a matrimonial dispute is going on between the petitioner and her husband, namely, Himanshu Arora, and various litigations are pending between them in the Court of Malerkotla. Further, she filed a complaint before the Senior Superintendent of Police, Sangrur against respondent No.2 and co-accused-Inderjit Singh. It is further alleged that the petitioner had engaged respondent No.2 who is an Advocate, for her dispute but later on, she disengaged him and took all her case files from him as she wanted

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to change her counsel and due to his reason, respondent No.2 was nursing a grudge against her. It is further stated that she received a legal notice from Sh. Rameshwar Kumar Singla, Advocate vide which a demand of Rs.2 lakh was made by filing cheque No.13283 on 23.04.2017 drawn on Allahabad Bank Branch Nabha, in the name of the petitioner, whereas, the petitioner never had any account nor had any cheque book in the said bank. The said complaint was further marked to the DSP, Malerkotla for inquiry and statements of both parties were recorded but the same was not entertained in a proper manner and recommended to consign the file by observing that the complainant has moved the complaint as Inderjit Singh has filed a case under Section 138 of the Negotiable Instruments Act against the petitioner. Thereafter, the petitioner retrieved a copy of statement made by Inderjit Singh dated 30.05.2017 through RTI, whereby, he stated regarding advancement of Rs.1,70,000/- by him to one Usha Kumari for treatment of her son and cheque of Rs.2 lakh given by said Usha Kumari. However, on instructions of Inderjit Singh, notice was sent by Rameshwar Singla and proceedings under the Negotiable Instruments Act were initiated against the petitioner on 03.06.2017 which was later withdrawn on 08.09.2018. It is further alleged that the inquiry report submitted by the Superintendent of Police, Malerkotla to Senior Superintendent of Police, Sangrur to the effect that Inderjit Singh in connivance with Mohd. Ashraf @ Billa and respondent No.2, had taken out cheque from cheque book of Narinder Singh which was lying with Shubh Singh, financier and father of respondent No.2 with an intention to implicate the petitioner in false case. Consequently, the criminal justice machinery was set in motion by registration of FIR in question.



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3. Learned counsel for the petitioner submits that the FIR (*supra*) was registered and respondent No.2 was specifically named in the FIR but when the final report was filed by the jurisdictional police authorities, his name was placed in column No.2 and he was declared innocent without there being any justifiable cause. The Investigating Officer has not conducted proper investigation and petitioner while appearing as PW-3 before the learned trial Court has levelled specific allegations against respondent No.2. The petitioner has engaged respondent No.2 as her counsel to pursue her matrimonial case against her husband and respondent No.2 started nursing a grudge against the petitioner as she has changed her counsel and complicity of respondent No.2 is writ large and the cheque in question was obtained from the cheque book of said Narinder Singh, which was lying in the custody of M/s Jai Shankar Finance Company which is owned by Shubh Singh, who is none other than the father of respondent No.2, as Narinder Sharma had purchased a motorcycle from Farid Auto Dealer and had financed it from M/s Jai Shankar Finance Company. Further, Ex.PW1/E i.e. attested copy of order dated 28.11.2017 in Civil Suit No.407 of 31.05.2017 titled as 'Inderjit Singh Vs. Ritika Arora' passed by the learned trial Court, the relationship of respondent No.2 with co-accused, Inderjit Singh has been duly established, however, both the Courts below have not considered the factual matrix in the right earnest and an application under Section 319 Cr.P.C. which was filed by the prosecution to summon respondent No.2 as an additional accused was unfairly dismissed by the learned Court below vide impugned order dated 14.11.2023 which has been passed in violation of the ratio of law laid down in 'Hardeep Singh Vs. State of Punjab and others' 2014 (3) SCC 92.



4. Having heard learned counsel for the petitioner and after perusing the record, this Court finds no infirmity in the impugned order passed by the Courts below. A perusal of the record clearly indicates that the impugned order was passed by the learned trial Court on the ground that no incriminating evidence was brought forth against respondent No. 2 leading to a declaration of his innocence as she only levelled allegations against Inderjit Singh for forging her signatures on the cheque in question. The challan was consequently filed only against Inderjit Singh and Mohd. Ashraf. However, while the petitioner appeared as PW-3 before the learned trial Court, she has reiterated the allegations contained in her complaint and also deposed that respondent No.2 who was representing her in her case related to Domestic Violence Act against her husband, was the main culprit for forging her signatures on the cheque in question as he had grudges against her for disengaging his services as her counsel. She further deposed that father of respondent No.2 was a financier and running a firm under the name and style M/s Jai Shankar Finance Company and Mohd. Ashraf @ Billa, owner of Farid Auto Dealer Malerkotla along with co-accused-Inderjit Singh, who being client of respondent No.2, had misused the cheque of Narinder Sharma. Moreover, in her original complaint, the petitioner has not levelled any allegation against respondent No.2. As such, the private respondent No.2 cannot be summoned by invoking the power under Section 319 Cr.P.C. only on the bald allegations made by the petitioner.

5. This Court is of the considered opinion that the learned trial Court has passed a well reasoned order. The material available on record, does not satisfy the crucial test in view of the ratio of law laid down in *Hardeep Singh's*



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case (supra), i.e. the test of there being more than a *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.

6. In the absence of any material suggesting existence of more than *prima facie* case available during the course of trial of an offence, Courts ought to refrain themselves from exercising its discretionary and extraordinary power under Section 319 Cr.P.C. The Constitution Bench of the Hon'ble Supreme of India in *Hardeep Singh's case (supra)* has held that the power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised only on the basis of the material available before the Court during a trial and not because the Magistrate or the Sessions Judge is of the opinion that some other accused/person may also be guilty of committing that offence.

7. The trial Court must evaluate the material against the person sought to be summoned and then adjudge whether such material, 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 material, the power under Section 319 Cr.P.C. ought not to be invoked. A two Judge Bench of the Hon'ble Supreme Court in 'Juhru and others Vs. Karim and another' (2023) 5 SCC 406 speaking through Justice Surya Kant, while relying upon *Hardeep Singh's case (supra)* has held as under:-

"16. It is, thus, manifested from a conjoint reading of the cited decision that power of summoning under Section 319 CrPC is not to be exercised routinely and the existence of more than 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 CrPC, 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, 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 CrPC ought not to be invoked.”

8. In view of the above, no ground is made out to interfere in the finding given by the learned trial Court, and thus, the present petition stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

19.02.2025

Neha

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