



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

CRR-811-2020

Date of decision: 03.03.2025

SUNITA AND ANOTHER

...PETITIONERS

V/S

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sankalp Gehlawat, Advocate for
Mr. Dev Kaushik, Advocate for the petitioners.

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. Rakesh Dhiman, Advocate for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. Present revision petition has been preferred against the impugned judgment dated 13.01.2020 passed by learned Additional Sessions Judge, Jhajjar, whereby the order passed by learned Judicial Magistrate Ist Class, Jhajjar has been dismissed and the application under Section 319 Cr.P.C. for summoning the petitioners as additional accused has been allowed.

2. Brief facts of the present case are that on 09.10.2016 at about 04 O'Clock, an altercation took place between the complainant and petitioners along with co-accused. Due to which, on the same day at about 9:45 PM, all the three accused came to the complainant with a Jeli, lathi and stone and tried to kill the complainant. Hence, the FIR (*supra*) was registered.

3. In consequence of the FIR (*supra*) and after completion of the investigation by the concerned police, final report under Section 173 Cr.P.C. was presented in the learned trial Court against co-accused but not against the present petitioners. The learned trial Court framed charges against the co-



accused. After the partial cross-examination of PW-1 i.e. injured/complainant, the prosecution moved an application under Section 319 Cr.P.C. before the learned trial Court for summoning the petitioners as additional accused and the same was dismissed vide impugned order dated 19.02.2018. Thereafter, the complainant filed a petition before learned Additional Sessions Judge, Jhajjar, whereby the order passed by learned trial Court was set aside and the application filed under Section 319 Cr.P.C. was allowed. Aggrieved by the same, the petitioners have approached this Court by way of filing the instant revision petition.

4. Learned counsel for the petitioners *inter alia* contends that the FIR (*supra*) was registered on the complaint made by Jagdish on 10.10.2016, perusal of which, clearly indicates that no specific injury has been attributed to either of the petitioner. Learned counsel further contends that the narration as given in the FIR (*supra*) is that all three accused have caused injuries on the person of the complainant-Jagdish. The names of two eye-witnesses namely, Varinder *alias* Binder and Rajes Singh were also mentioned in the FIR (*supra*) itself, as they had witnessed the alleged incident. He submits that statement of Varinder *alias* Binder was recorded under Section 161 Cr.P.C. by the investigating officer, which is available on record as Annexure P-6. A perusal thereof clearly indicates that the petitioners were never present at the place of incident and the main accused, namely, Varinder *alias* Billu had already caused injuries on the person of complainant-Jagdish, who was apprehended by the eye-witnesses. As such, it is clearly evident that the petitioners have not participated in the alleged incident. Additionally, complainant-Jagdish, while appearing as PW-1 on 12.07.2017 i.e. after nine months of the incident, has



made material improvements in his deposition and assigned specific role and injuries to the petitioners as well. The complainant was duly confronted in his cross-examination in this regard. He further submits that the investigating agency, after thoroughly examining the material available on record, has declared the petitioners as innocent. Furthermore, the learned trial Court has refused to exercise power under Section 319 Cr.P.C. and there is nothing available on record to show that the impugned order passed by learned Additional Sessions Judge, Jhajjar while exercising his power under revisional jurisdiction satisfies the test of having more than *prima facie* case as culled out by the Constitutional Bench of the Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab, SC 2014(1) RCR (Criminal) 623***. He submits that no reasoning satisfying the objective standards of reason and justice has been provided, while passing the impugned order. The impugned order has been passed in a mechanical manner without advertng to the factual matrix of the present case.

5. *Per contra*, learned State counsel assisted by learned counsel for respondent No.2 opposes the prayer made by the petitioners and submits that the petitioners were named in the FIR (*supra*) and the deposition of the complainant-Jagdish as PW-1 is duly corroborated by the medical evidence. Further, it is immaterial if complainant is not able to narrate the exact sequence of the events by pin pointing the injuries caused by each accused. Furthermore, reliance of the petitioners on the statement of eye-witness i.e. Varinder *alias* Binder Singh recorded under Section 161 Cr.P.C. is totally misplaced. Lastly, the trial Court has failed to assign any reasoning while



refusing to exercise power under Section 319 Cr.P.C. and has only mentioned that the *bona fide* of the investigating agency cannot be suspected.

6. I have heard the learned counsel for the parties and perused the material available on record. It transpires that the investigating agency, after thorough examination of the material available on record, has declared the petitioners as innocent and in the FIR (*supra*), no specific injury or overt act has been attributed to the petitioners.

7. Mere statement of the prosecutrix or complainant, which is not substantiated by any credible material, cannot be a ground to invoke the discretionary and extraordinary power of this Court to summon an additional accused under Section 319 Cr.P.C. In the absence of any material suggesting existence of more than *prima facie* case available during the course of trial of an offence, the 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 Court in ***Hardeep Singh's case*** (*supra*) has held that the power under Section 319 Cr.P.C is a discretionary and extraordinary power. It is to be exercised only on the basis of the material available before the Court during the 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. Speaking through Justice B.S. Chauhan, the following was observed :

"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 un rebutted, 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."

8. Subsequently, Hon'ble Supreme Court in the case of **Sagar Vs. State of Uttar Pradesh and another** Criminal Appeal No. 397 of 2022 (Arising out of SLP(Crl) No.7373 of 2021), referring to **Hardeep Singh** (supra) made the following observations:

"The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above 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."

9. Recently Hon'ble 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.”

10. In view of the discussion made hereinabove, the present revision petition is allowed in the following terms: -

- (i) The impugned order dated 13.01.2020 passed by learned Additional Sessions Judge, Jhajjar, vide which, the petitioners have been summoned as additional accused is hereby, set aside, along with all consequential proceedings.
- (ii) Nothing observed herein shall be construed as a comment on the merits of the case at hand, thereby, causing prejudice to the case of the prosecution.

March 03, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |