



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

Sr. No.215

CRM-M-13813-2024(O&M)

Date of decision : 27.03.2025

OM PARKASH AND ORS

..... Petitioners

VERSUS

STATE OF HARYANA AND ANR

..... Respondents

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Ms. Shaveta Sanghi, Advocate (through video conferencing)
Mr. Saurabh Sharma, Advocate and
Mr. Ranjan Lohan, Advocate for the petitioners.

Ms. Mahima Yaspal, DAG, Haryana.

Mr. Kuldeep Khandelwal, Advocate for respondent No.2.

KIRTI SINGH, J. (Oral)

1. The challenge in the present petition is to the impugned order dated 26.02.2024 passed by the Additional Sessions Judge, Charkhi Dadri, whereby the Revisional Court has allowed the revision petition filed by the complainant for summoning the present petitioners as accused under Section 319 Cr.P.C..

2. Brief factual matrix of the present petition is that the petitioner No.1 is the father-in-law, petitioner No.2 is the mother-in-law and petitioner No.3 is the brother-in-law of respondent No.2. The marriage of the respondent No.2 was solemnized with the son of the petitioners No.1 and 2 on 07.02.2005, whereafter, it is alleged that she was subjected to harassment and beatings for the demand of dowry and was thrown out of the matrimonial home, leading her to file a complaint against six persons. The FIR No.224 dated 07.06.2016 was then lodged and investigation carried out, in which five accused included the present petitioners were found innocent



and challan was presented only against the husband of respondent No.2. During the course of trial, an application for summoning the petitioners and two other proposed accused was moved which was dismissed by the trial Court on 09.11.2023. A revision petition was then preferred by respondent No.2, wherein under the said order was set aside and summoning of the petitioners was allowed vide impugned order dated 26.02.2024. Aggrieved from the same, the present petition has been moved.

3. Learned counsel for the petitioners submits that the marriage of respondent No.2 was solemnized with the son of the petitioner Nos.1 and 2 on 07.02.2005. Since the year 2006, the petitioners are residing separately, as can be evinced from the ration card of the respondent No.2. It is further submitted that the complaint was filed by respondent No.2 in the year 2016 i.e. 11 years after her marriage was solemnized, and that no specific instances or time of incidents have been mentioned in the allegations levelled against the petitioners. Learned counsel submits that since no prima facie allegations were made out against the petitioners, they were exonerated during investigation and challan was presented only against the husband of respondent No.2. She submits that the impugned order of issuing process against the petitioners is sheer abuse of law, and that even the learned trial Court vide order dated 09.11.2023 had correctly rejected the application filed by respondent No.2 under Section 319 Cr.P.C., which was later wrongfully set aside by the Revisional Court vide the impugned order.

4. *Per contra*, learned State counsel and learned counsel for the respondent No.2 opposed the prayer made in the present petition by contending that the impugned order was rightly passed by the Revisional Court after due appreciation of the evidence. Learned counsel for respondent No.2 vehemently contends that the petitioners were named and specific roles



and allegations were attributed to each one of them by respondent No.2 in the FIR, in her statement made under Section 161 Cr.P.C. and in her deposition before the Illaqa Magistrate, and it was only after a careful consideration of the material on record that the petitioners were summoned, thereby warranting no interference by this Court.

5. Heard learned counsel appearing for the parties and perused the paper book.

6. Before proceeding further, it is pertinent to discuss the 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 **Hardeep Singh (supra)** has laid down that:

"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 ap-



pears 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."

7. 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."



8. 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."

9. 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."

10. The principles of law with reference to exercise of jurisdiction under 319 Cr.P.C. are well settled. As has been opined in a plethora of judgments, it is clear that the objective to invoke the powers under Section



319 Cr.P.C., is to not allow the real perpetrators of an offence to get away unpunished. However, a proposed accused cannot be summoned to face trial under Section 319 Cr.P.C. in a mechanical manner, without due appreciation of the facts of the case and the material on record. The litmus test of more than a *prima facie* case must be adhered to in letter and spirit.

11. Reverting to the case at hand, a careful perusal of the judicial file reveals that though the petitioners were specifically named by respondent No.2, however, there is no other evidence on record to substantiate the allegations so levelled. It is an admitted fact by the respondent No.2 that on each of the alleged instances of harassment on beatings, no complaint was moved. Further there is a lack of specifications about the panchayats so convened, as is contended by respondent No.2. There is also no medical evidence, though not sine qua non, to corroborate the allegations of beatings. No doubt respondent No.2 is the best witness of her case, however, the allegations levelled by her, without any evidence to substantiate the same, fails to meet the criteria of more than a *prima facie* case, essential for summoning of an additional accused under Section 319 Cr.P.C.

12. In the light of facts and circumstances, viewed in light of the legal principles governing Section 319 Cr.P.C., this Court finds that the material adduced in the present case fails to establish the existence of even a *prima facie* case against the proposed accused. Trite to say that the power under Section 319 Cr.P.C. is extra-ordinary and must be exercised sparingly, only when there is strong evidence on record indicating the existence of more than a *prima facie* case against the person sought to be summoned. In the present case, the evidence presented does not meet the threshold required



for summoning the petitioners as additional accused, since mere mention of a person’s name in the witness statement or allegations, without substantially corroboration, is insufficient.

13. Accordingly, the petition is allowed and impugned order dated 26.02.2024 passed by the learned Addl. Sessions Judge, Charkhi Dadri is set aside qua the petitioners.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

27.03.2025
Kavita

Whether speaking / reasoned
Whether Reportable

Yes/No
Yes/No