

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-18696-2025

Date of Decision: 04.04.2025

Happy @ Hitesh

... Petitioner

VS.

State of Haryana & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Aditya Sanghi, Advocate for the petitioner

Sandeep Moudgil, J. (Oral)

(1). This petition under Section 528 BNSS, 2023 has been filed by the petitioner seeking to quash the impugned order dated 19.03.2025 (Annexure P1) vide which the revision petition filed by the complainant has been allowed by setting aside the order dated 25.08.2022 passed by the ACJM (Annexure P3) and the petitioner has been summoned to face trial in FIR No.486 dated 05.09.2017 under Section 148/149/323/324/506 IPC with the aid of Section 319 CrPC.

(2). Learned counsel for the petitioner contends that despite being named in the FIR (Annexure P-6) as a participant in the alleged incident dated 05.09.2017, the petitioner was not summoned or charge-sheeted by the police following a thorough investigation and as per the Final Report under Section 173 CrPC dated 25.01.2018 (Annexure P-7), the Investigating Officer, EASI Jaipal Singh, after conducting a comprehensive investigation, including examining the occurrence, recording statements of witnesses (including the complainant Monika and her family members) under Section 161 CrPC, reviewing medical reports of the injured, and considering surrounding circumstances such as the unexplained delay in Pradeep's

medical examination, concluded that the petitioner's alleged role was not supported by independent, corroborative, or forensic evidence. It is also the case of the petitioner that no weapon was recovered nor any independent disinterested witness supported the complainant's version or the presence of his presence at the place of occurrence which weighed in the mind of the investigating agency to place the petitioner in Column No.2 of the police report as he was not found involved in the quarrel.

(3). It is argued that there are material contradictions and irregularity in the testimony of the complainant in regard to the occurrence as mentioned in the FIR inasmuch as in her statement under Section 161 CrPC, she introduced the name of Dinesh as an assailant though his name was not mentioned at the first instance in the FIR itself and in the like manner, the complainant either supplemented or deleted the facts in her deposition vis-à-vis the original version made in the FIR and however, such inconsistencies cumulatively rendering her testimony unreliable, were never appreciated by the revisional Court while setting aside the trial court order.

(4). Heard learned counsel for the petitioner.

(5). An application was filed under Section 319 CrPC by the prosecution to summon the petitioner Happy @ Hitesh as an additional accused in case FIR No.486 dated 05.09.2017 under Sections 148/149/323/324/506 IPC registered at Police Station City Narnaul on the ground that the petitioner was present with the accused persons at the place of occurrence and he gave a knife injury to the brother of the complainant which was duly corroborated by the MLR of Pradeep.

(6). The trial Court vide order dated 25.08.2022 observed that merely statement of complainant ipso facto cannot form basis of summoning a person under Section 319 CrPC inasmuch as the record reveals that the Pradeep got conducted his MLR after taking advise with an intention to implicate the present petitioner and it is for these material contradictions and loopholes, the trial court did not find a valid reason to summon the petitioner since there is no new evidence except repetition of the statement of the complainant as given in complaint Ex.PW1/A. The trial court drew its conclusion in the following manner:-

“In the present case, though there is specific mention of name of Happy @ Hitesh in the complaint Ex. PW1/A and in the FIR, yet, in the investigation Happy @ Hitesh was found innocent by the police. Even when complainant Monika deposed before the Court on oath as PW1, she also mention the name of Happy @ Hitesh and also attributed specific role and injury caused by him to her brother Pradeep. The Investigating Officer did not charge-sheeted this person and he was found innocent during investigation. Merely statement of complainant ipso-facto cannot be formed the basis of summoning of a person under Section 319 Cr.P.C. The persual of file reveals that the alleged occurrence took place at about 4/5:00 PM and the MLRs of complainant Monika, Jyoti and Sandeep were conducted in between 5:30 PM to 5:40 PM whereas the MLR of Pardeep was got conducted at 9:00 PM. From this fact it appears that Pradeep got conducted his MLR after taking legal advise and in order to implicate proposed accused in the present case, as such this Court did not find any reason to summon Happy @ Hitesh to face trial alongwith other co-accused on the basis of statement of complainant which is merely a reiteration of her complaint Ex. PW1/A and no new evidence has been brought on record. The

power conferred on the Court under Section 319 Cr.P.C. is extra-ordinary power and shall be exercised sparingly and only in those cases where the circumstances so warrant.

In the present case, this Court does not find any circumstance nor evidence available on file is credible, cogent and strong enough to summon Happy @ Hitesh as additional accused in the present case. 5. In the light of above discussion, this Court is of the view that the application under Section 319 of Cr.P.C filed by the prosecution is without any merit and the same is, therefore, dismissed. To come up on 18.11.2022 for evidence of the prosecution. All the unexamined witnesses be summoned.”

(7). The complainant preferred a revision petition against the order dated 25.08.2022 passed by the trial court pointing out that the trial court ignored material evidence and also the fact that the complainant in her complaint and in her testimony had leveled specific allegations regarding causing of injuries by the petitioner which is proved by the medical report. The revisional Court vide its impugned judgment dated 19.03.2025 set aside the order of the trial court and observed that though the petitioner was found innocent during investigation by the police, however, the material on the basis of which the investigating agency came to such conclusion that the petitioner was not involved in the commission of offence has not been brought on record.

(8). Having heard learned counsel for the petitioner, it is a settled proposition of law that ample power is vested in the courts to add any person as an accused during the course of trial and the object of Section 319 as elucidated in **Hardeep Singh vs. State of Punjab & Anr (2014) 3 SCC 92**, is

where the investigating agency fail to involve the culprits, the courts have been empowered to call upon the said left out accused to face trial on the basis of all relevant materials, depositions, evidence which tilt towards the culpability of the proposed accused person and in such case, the degree of satisfaction required by the Courts for invocation of Section 319 CrPC is the 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). In the present case, the degree of satisfaction shown by the trial court in rejecting the application for summoning the petitioner to face trial is far unreliable and not based upon the record. On the other hand, the conclusion or the satisfaction drawn by the revisional court as to the deposition of the complainant stepped into witness box as PW1 reiterating her stand that it was the petitioner who gave knife blow on the left hand of Pradeep is similar to her statement recorded by the police under Section 161 CrPC. It is rather more than trustworthy that there is no omission or substitution in the statements given by the complainant where the involvement of the petitioner and the role attributed against him is substantiated. The conclusion arrived at by the trial court that mere reiteration of averments in the complaint sans evidence cannot be taken against the complainant where specific attribution has been made against the petitioner.

(10). Though the degree of satisfaction is much higher albeit, however, the word “evidence” occurring in Section 319 CrPC means only such evidence as is made or produced before the court in relation to a statement or the document and based thereupon, if the court is convinced, it

can exercise powers under Section 319 and proceed against the accused. While doing so, the Court is not required or justified in appreciating the deposition/evidence of the prosecution witnesses on merits as that is an exercise which is to be undertaken at the time of trial.

(11). Having said so, it stands established that the circumstance and specific attribution made by the complainant against the petitioner that he was armed with knife and injured Pradeep not once but twice before the police and in her testimony before the Court are very much credible, cogent and strong enough to summon the petitioner and as such the judgment passed by the revisional court is liable to be upheld.

(12). In view of the above discussion, there is no merit in the present petition and is dismissed accordingly.

04.04.2025

V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

- Yes/No
- Yes/No