



CRR-952-2024 (O&M) 1

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

CRR-952-2024 (O&M)

Date of Decision:03.04.2025

Shinu Bansal and another

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Deepak Aggarwal, Advocate for the petitioners.

Mr. P.S. Bhandari, AAG, Punjab.

Dr. Rau P.S. Girwar, Advocate and
Ms. Archana Arora, Advocate for respondent No.2.

JASGURPREET SINGH PURI J.(Oral)

1. The present revision petition has been filed by two ladies who are mother and daughter challenging the impugned order passed on 18.04.2024, whereby they were summoned as additional accused based on the application filed by the prosecution under Section 319 of the Cr.P.C.

2. Brief facts of the present case which have emanated from the able assistance of learned counsel for the parties are that FIR was lodged based on the statement of respondent No.2, in which she stated that she has two children, one is a girl aged 9 years and the other is a boy, who is also stated to be 9 years old. As per the allegations, the complainant-respondent No. 2 saw one of the co-accused, namely Pawan Garg, in her house. Upon seeing him,

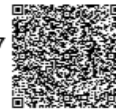


her daughter, who is the victim, started crying and told her that the aforesaid accused had come to the house while she was alone. He sent her brother to play outside after giving him a bicycle. Thereafter, the aforesaid co-accused Pawan, made her sit on the sofa in the drawing room and then molested her. The matter was investigated by the police based on the complaint made by Respondent No. 2, upon which the present FIR was registered and a challan was filed against the aforesaid Pawan Garg.

3. The present two petitioners were neither named in the FIR nor was any reference made to them at the time of presentation of the challan. However, one video was included as part of the challan and was relied upon as a document. Prior to that, statement of the victim under Section 164 Cr.P.C. was recorded before learned JMIC on 01.02.2023, wherein, as per Annexure P-2, she reiterated the allegations against the accused Pawan Garg and almost repeated the same allegations against him. However, she did not name the present two petitioners, even in the statement recorded under Section 164 Cr.P.C. Similarly, a statement was made by husband of the complainant, who is the father of the victim, under Section 161 Cr.P.C. and in his statement, he reiterated the same allegations pertaining to aforesaid accused, Pawan Garg but made no reference to the present two petitioners. He further stated that his statement was based on what his wife-complainant (respondent No. 2), had told him regarding the incident. Similarly, the victim also made a statement under Section 164 Cr.P.C., reiterating the same allegations as stated in the FIR regarding the aforesaid accused, Pawan Garg, but no reference was made to the present two petitioners.



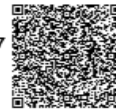
4. After the presentation of the challan, in which no reference was made to the present two petitioners, the trial commenced. Respondent No. 2, the complainant, was examined as a prosecution witness (PW-1), and her deposition is attached with the present petition as Annexure P-6. After reiterating the allegations contained in the FIR, she further deposed during her examination-in-chief that when she was telling her husband about the incident when, in the meantime her friend, Pooja who runs a parlour along with one of the present petitioners, Shinu arrived at the scene. The complainant had made a phone call to Vijay, the brother of the accused Pawan and informed him about the incident. Vijay replied that she was mistaken and sent the aforesaid petitioner Shinu to the spot. The complainant further deposed that Shinu, who is petitioner No.1 along with her daughter, i.e. petitioner No. 2, aged 15-16 years, had forcefully taken her daughter to their house and the complainant also informed her husband about the same. Upon hearing this, her husband immediately left the office to go home. She further deposed that both the present petitioners were inside the room and were forcing her daughter not to tell anyone anything and thereafter her husband got released her daughter from their possession and a video of the accused entering and leaving their house was recorded in the CCTV footage. Similarly the video which was so referred by the complainant was also played in court in stages due to the different clippings. In one of the clippings, the accused, Pawan, was seen entering the house and in later clippings, both petitioners were allegedly seen dragging the prosecutrix-complainant's daughter, into their house at a later stage.



5. PW2 is the statement of the prosecutrix-victim child in which she deposed regarding the incident. She stated that petitioner No.1 resides with her brother namely Pawan in the same house and on that day, her mother had accompanied petitioner No. 2 to the beauty parlour. She further deposed that both the petitioners after the incident had dragged her into their house and locked her inside. She also referred to a pen drive containing a video in the form of different clippings.

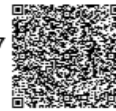
6. On the basis of the aforesaid depositions of the prosecutrix-the victim and her mother, who is the complainant, the learned Additional Sessions Judge, Bathinda vide the impugned order, allowed the application filed under Section 319 Cr.P.C. and summoned the present petitioners as additional accused whereas another person namely Vijay who is the brother of the aforesaid Pawan was also sought to be summoned by prosecution but was not summoned by the trial court. The present two petitioners were summoned only under Sections 342 and 506 of IPC.

7. Learned counsel for the petitioners submitted that the present impugned order is liable to be set aside in view of the fact that the complainant-respondent No. 2 and her daughter-victim have improved their statements during deposition, based on tutoring given to them, with the intention to falsely implicate the present two petitioners. Petitioner No.1 is the sister of accused, namely Pawan and petitioner No. 2 is the daughter of petitioner No. 1. Furthermore, petitioner No. 2 was a juvenile at the time of the alleged occurrence, regarding which no notice has been taken by the learned Additional Sessions Judge, Bathinda. He submitted that although there is no bar for considering the application under Section 319 Cr.P.C. at the stage it



was taken, even if the petitioners were not named in the FIR but even according to the improved version, the present petitioners did not participate in the alleged occurrence of molestation. However, it was at a later event, even as per the prosecution, where some video footage showed the petitioners dragging the victim into their own house. Therefore, the onus and standard of proof for summoning the petitioners as additional accused was on very strong footing. The learned Additional Sessions Judge has not recorded any satisfaction to determine whether a case of 'more than *prima facie*' evidence was made out or not, as per the judgment of the Constitutional Bench of Hon'ble Supreme Court in **Hardeep Singh vs. Vs. State of Punjab & Ors. 2014 (1) R.C.R. (Criminal) 626**. He submitted that the sole purpose of summoning the present petitioners as additional accused by filing the application was to pressurize them and to falsely implicate them. To substantiate his arguments, he submitted that even the CCTV footage, which was stated to have been provided in the form of different clippings on a pen drive, had not been subjected to any verification by the FSL. It remains unclear whether the petitioners were seen in the footage, to what extent any role could be attributed to them, and whether it was a case of dragging or just resolving the dispute. In nutshell, he submitted that the law laid down by the Constitutional Bench of Hon'ble Supreme Court in ***Hardeep Singh's case (supra)*** has not been followed by the learned Additional Sessions Judge, Bathinda, in its correct perspective and therefore, the impugned order may be set aside.

8. On the other hand, the learned State counsel submitted that although both petitioners, who are the mother and daughter, have neither been named in

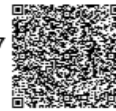


the FIR nor has the challan been presented against them but it later came to light during the deposition when they were found in the CCTV footage, which was also played in the courtroom. As per the deposition, they were found to be involved in the offence and that was the reason they were summoned under Sections 342 and 506 of the IPC .

9. Learned counsel appearing on behalf of the complainant-respondent No. 2 submitted that it is a settled law that even if a person is not named in the FIR, nor is it in column No. 2, nor is a challan presented against him, he can still be summoned as an additional accused on the basis of the evidence adduced before the Court, even by way of examination-in-chief at different stages. The same has been done in the present case as well and there is no legal requirement that further cross-examination, etc., has to be done and purely on the basis of examination-in-chief, if the learned Trial Court is satisfied that the person sought to be summoned as an additional accused is required to face trial, then it is within the permissible limits of the concerned court to summon the person at an appropriate stage. He also submitted that once the petitioners have been seen in the video footage, no fault can be found in the impugned order as their motive is clear from the aforesaid video even if the dragging and taking away of the victim from her own house by the present petitioners occurred at a later point in time and that was the reason they have been summoned under Sections 342 and 506 of the IPC.

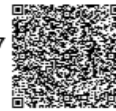
10. I have heard the learned counsels for the parties.

11. It is a case where FIR was registered by respondent No.2-complainant against one Pawan Garg, alleging that the daughter of the complainant had been molested by aforesaid Pawan Garg. Petitioner No.1 is the sister of the



aforementioned Pawan Garg and Petitioner No. 2, who was stated to be a juvenile at the time of incident, is the daughter of petitioner No. 1. Both the petitioners were admittedly neither named in the FIR, nor was any remote reference made to them. An investigation was conducted and during the investigation, a statement under Section 161 Cr.P.C. was recorded, in which no reference was made to the present two petitioners. The statement of the victim under Section 164 Cr.P.C. was also recorded before the learned trial Court, in which she reiterated what was stated by her mother in the FIR, but no reference or event was made to the present two petitioners at all. It was at the stage of trial when both prosecution witnesses, the complainant and the victim-child, were examined-in-chief then they deposed before the Court that after the incident of molestation was over, the present two petitioners were seen dragging the victim-child towards her own house. It was on this basis that the learned Additional Sessions Judge, Bathinda, allowed the application filed under Section 319 Cr.P.C. and summoned the present petitioners as additional accused. One of the other persons, namely Vijay, who was also sought to be summoned as an additional accused, was not summoned because the allegations against him were only pertaining to staring.

12. In this way, summoning of the petitioners was based on subsequent events and on the basis of a CCTV footage, which was stated to have been played in the Court. However, the aforesaid CCTV footage was never sent to any appropriate laboratory for the purpose of its authentication. Learned Additional Sessions Judge, while considering the application for summoning the present petitioners as additional accused, referred to the authoritative judgment of Hon'ble Supreme Court in ***Hardeep Singh's case***



(*supra*). He observed in para No.4 that, in light of the legal principles adumbrated in the aforesaid judgment, the facts of the present case may be appraised. Hon'ble Supreme Court in the aforesaid judgment in **Hardeep Singh's case (supra)** categorically observed and laid down the law in para No.99 which has been reproduced in the impugned order that though only a *prima facie* case is required to be established from the evidence led before the Court not necessarily tested on the anvil of cross-examination but it requires much stronger evidence than mere probability of his complicity. Para No.99 of the aforesaid judgement of Hon'ble Supreme Court in the case of **Hardeep Singh's case (supra)** is reproduced as under:-

“99. 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.”

13. It was further observed that the test that has to be applied is one which is ‘more than *prima facie*’ case as exercised at the time of framing of the



charges, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. Hon'ble Supreme Court further observed that in the absence of such satisfaction, the Court should refrain from exercising power under Section 319 Cr.P.C.

14. The learned Additional Sessions Judge, Bathinda, after stating the facts of the case, later in the order observed what the allegations were against the present two petitioners, who were sought to be summoned as additional accused. The only consideration made by the learned Additional Sessions Judge in para No.8 was that, so far as the present two petitioners are concerned, the allegations are supported by the video footage indicating that the victim child was confined in the house by them. The victim-child also alleged in Court that she was threatened by them not to disclose the occurrence to anyone. However, learned Additional Sessions Judge, Bathinda , made no observations as to whether he has arrived at a more than *prima facie* satisfaction for summoning the present petitioners or not which was a requirement and a condition *sine qua non* for the purpose of summoning of an additional accused and also in consonance with the law laid down by Hon'ble Supreme Court in ***Hardeep Singh's case (supra)***. The only reference made by the learned Additional Sessions Judge was with regard to allegations against the present petitioners, but short of recording of any satisfaction what to talk of recording of more than *prima facie* satisfaction.

15. In this way a perusal of the impugned order would show that the impugned order has been passed in violation of law laid down by Hon'ble Supreme Court in ***Hardeep Singh's case (supra)***.



16. Consequently, the present petition is allowed. The impugned order dated 18.04.2024 is hereby set aside. The learned Judge, Special Court/Additional Sessions Judge, Bathinda, is directed to pass a fresh order by adhering to the law laid down by the Hon’ble Supreme Court in ***Hardeep Singh’s case (supra)***. The fresh order shall be passed within a period of three months from today, with a fresh application of mind and uninfluenced by the impugned order dated 18.04.2024 or the present order passed by this Court. For the sake of repetition, it is made clear that the fresh order shall be passed strictly in accordance with law, adhering to the aforesaid judgment of the Hon’ble Supreme Court in ***Hardeep Singh’s case (supra)*** and by way of a fresh application of mind.

(JASGURPREET SINGH PURI)
JUDGE

03.04.2025

shweta

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