



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

CRR-2914-2018 (O&M)

Date of Decision: 03.04.2025

HARISH KUMAR AND OTHERS

...Petitioners

V/S

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Abhishek Goyal, Advocate
for the petitioners.

Mr. Vikas Bhardwaj, AAG Haryana.

HARPREET SINGH BRAR J. (Oral)

1. Present revision petition has been filed impugning the order dated 04.08.2018 passed by learned Additional Sessions Judge, Palwal, vide which the application under Section 319 Cr.P.C. (now Section 358 of BNSS) for summoning the petitioners to face the trial has been allowed and petitioners have been summoned as additional accused to face the trial in FIR No. 743 dated 16.10.2016 registered under Sections 302, 506, 34 of Indian Penal Code at Police State Sadar Palwal District Palwal.

2. The brief facts of the present case are that on 16.10.2016, the complainant alongwith her husband Rajender Singh (deceased) and her son Hemant were working in their fields. Their son, Sonu came to the fields for bringing tea from the house. Kishori son of Rati Ram, Bhupinder s/o Kishori, Harish son of Kishori, residents of village Dudhola, Tehsil and Distt. Palwal were also working in their fields. At about 5.30 PM in the evening they were putting *jawar karbi* in the company fields. Then Kishori and her son Bhupender and Harish had asked them not to do so. On this account, there was exchange of heated words between the parties. Kishori and Bhupinder started abusing. Thereafter, Bhupender inflicted a tractor handle blow on the chest of

**CRR-2914-2018 (O&M)****-2-**

complainant's husband Rajender and inflicted kicks and fist blow on his chest. Thereafter, Kishori inflicted slap and fist blows to her/complainant. Harish inflicted *lathi* blow on the shoulder of her son Sonu. Nirmal son of Babu Ram and Vinod son of Rattan have hurdled abuses and also threatened the complainant. Thereafter, the deceased Rajender was shifted to the hospital by complainant's family members. On account of receiving the injuries, her husband had died. The complainant made a written complaint to the police and on her complaint an FIR(supra) was registered against the petitioners and others.

3. Learned counsel for the petitioners *inter alia* contends that earlier an identical application was filed under Section 319 Cr.P.C. for summoning the petitioners as additional accused. The said application under Section 319 Cr.P.C. was dismissed by the trial Court vide order dated 07.09.2017 (Annexure P-7). The aforementioned order of learned trial Court was challenged before this Court by filing CRR-4269-2017 and the said revision petition filed by respondent No. 2 has been dismissed as withdrawn. However, liberty was granted to respondent No. 2 to file a fresh application under Section 319 of Cr.P.C. after adducing evidence indicating complicity of the petitioners in the alleged occurrence. Learned trial Court has exercised the power under Section 319 of Cr.P.C. on a subsequent application filed under Section 319 of Cr.P.C. mainly on the ground that one eye witness namely Sonu has been examined. No new evidence with regard to complicity of the petitioners has come on record after the dismissal of the first application and further the petitioner No. 1 is alleged to have given injury on the shoulder of Sonu. However, there is no medical evidence to support his ocular version

**CRR-2914-2018 (O&M)****-3-**

and further the petitioners No. 2 and 3 are alleged to have only hurled abuses. Learned trial Court has not appreciated the fact that witnesses while deposing before the trial Court have made material improvements and during investigation, veracity of the allegations made by the complainant, have been thoroughly examined and petitioners have been declared as innocent. The impugned order has been passed without satisfying the test as culled out by Hon'ble Supreme Court in '**Hardeep Singh Vs. State of Punjab and others**' **2014 (3) SCC 92.**

4. *Per contra*, learned State counsel, opposes the prayer made by learned counsel for the petitioners on the ground that specific role has been attributed to petitioner No. 1-Harish Kumar in the FIR(supra) and he is alleged to have given injury on the shoulder of Sonu, the eye-witness cited by prosecution and while deposing as prosecution witness, he has reiterated his allegations against the petitioners. However, learned State counsel could not controvert the fact with regard to injury suffered by eye-witness Sonu, there is no medico-legal report.

6. I have heard the learned counsel for the parties and perused the material available on record. It transpires that statement of eye-witness Sonu regarding the injury suffered by him, has not been corroborated by any medical evidence. In addition, earlier the investigating agency has exonerated the present petitioners after conducting a detailed investigation on the ground that no evidence has been found against them. It is trite law that summoning of a person as an additional accused under Section 319 Cr.P.C. requires a much stronger evidence than mere probability of complicity of such person in

**CRR-2914-2018 (O&M)****-4-**

committing the alleged offence. Undisputedly, it is an extraordinary power and should be used with parsimony.

7. Discussing the scope of Section 319 Cr.P.C., the Constitution Bench of Hon'ble Supreme Court in case titled **Hardeep Singh Vs. State of Punjab, SC 2014(1) RCR (Criminal) 623** 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 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



CRR-2914-2018 (O&M)

-5-

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. Mere statement of the eye witness-Sonu, which is not supported by any medical evidence, 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 should 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 and the same must be exercised judicially, having regard to the facts and circumstances of the case.

**CRR-2914-2018 (O&M)****-6-**

11. Taking into consideration the peculiar facts and circumstances of the case at hand, this Court is of the opinion that case of the prosecution does not satisfy the test of more than *prima facie* case qua the present petitioners as enunciated in Hardeep Singh's case (supra).

12. Accordingly, the instant revision petition is allowed and the impugned order dated 04.08.2018 passed by learned Additional Sessions Judge, Palwal, is hereby set aside along with subsequent proceedings, if any, qua the present petitioners.

03.04.2025

Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE*Whether speaking/reasoned*
*Whether reportable**Yes/No*
Yes/No