



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

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Date of decision: 02.04.2025

1. CRR-1733-2021 (O&M)

Ravinder @ Fauji

....Petitioner

Versus

State of Haryana and another

....Respondents

2. CRR-632-2022 (O&M)

Akshay @ Akash

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rajesh Bansal, Advocate
and Mr. Ajay Bansal, Advocate
for the petitioner(s).

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. Lajpat Rai Sharma, Advocate
for respondent No.2 in CRR-1733-2021.

HARPREET SINGH BRAR J. (Oral)

1. Vide this common order, I intend to dispose of CRR Nos.1733 of 2021 and 632 of 2022, as common questions of law and facts are involved for adjudication. For the sake of convenience, facts are taken from CRR-1733-2021.

2. Both the present revision petitions have been preferred by the petitioner(s) for setting aside the order dated 17.09.2021 passed by



the learned Sessions Judge, Panipat, whereby the application filed by the complainant(s) under Section 319 Cr.P.C. has been allowed.

3. The brief facts of the case are that the complainant/respondent No.2 got registered an FIR No.445 dated 07.09.2020, accusing the petitioner as well as Suraj, Raj Kumar @ Raju, Akshay @ Akash and Fauji of killing his brother, Balram @ Bablu, by levelling the allegations that on 06.09.2020, the complainant/respondent No.2 saw his brother with the accused near a liquor shop on Sanoli Road, Panipat, where they were arguing. The complainant asked his brother to go home and continued with his work. When his brother didn't return later, the complainant searched for him and found his dead body near a drain in some bushes. Subsequently on the basis of suspicion, the FIR (supra) was registered.

4. Learned counsel for the petitioner(s), inter alia, contends that both the petitioners have been falsely implicated only on the basis of suspicion raised by the complainant/respondent No.2 in the FIR. Learned counsel for the petitioner(s) refers to the case set up by the prosecution in the FIR (Annexure P-1) and submits that the allegation against the petitioners are that the petitioners along with co-accused Suraj and Raj Kumar, after consuming liquor with the deceased have been hurling abuses to his deceased brother and thereafter, the complainant went for his work and his brother did not return back in the night, the next day, his dead body was found near the drain in the bushes. The complainant/respondent No.2 has further asserted that he



has a suspicion that his brother has been murdered by co-accused Suraj, Raj Kumar and the present petitioners.

5. Learned counsel for the petitioner(s) further submits that during the course of investigation, the investigating agency failed to collect any material or evidence to connect the petitioners with the alleged commission of offence. Further, nothing is forthcoming from the evidence collected by the investigating agency to show by whom or in what manner, the deceased has been murdered at the best the case against the petitioner(s) is of last seen as nothing pointing towards their complicity has been found. He further submits that the learned trial Court while exercising powers under Section 319 of Cr.P.C., has failed to apply its judicial mind as culled out by the Hon'ble Supreme Court in ***'Hardeep Singh vs. State of Punjab and others'* 2014 (3) SCC 92.**

6. *Per contra*, learned State counsel assisted by learned counsel for respondent No.2 submits that the version of respondent No.2 remain consistent. The respondent No.2 has specifically named the petitioners with regard to hurling of abuses, after consuming liquor and when he stepped into the witness-box, he has reiterated his allegations against the petitioners and as such, the stand of respondent No.2 remained consistent throughout. To support his arguments, learned counsel for respondent No.2, has relied upon the judgment passed by the Hon'ble Supreme Court in ***"Sartaj Singh vs State of Haryana and another"*, 2021(2) RCR (Criminal) 527** as well as the judgment passed by this Court in ***"Neeraj Kumar @ Rocky and another vs State of***



Haryana and another”, passed in CRR No.1566 of 2021, decided on 17.01.2022.

7. Having heard learned counsel for the parties and after perusing the record, this Court finds that the learned Sessions Judge, Panipat, has erred in allowing the complainant's application filed under Section 319 Cr.P.C. Furthermore, the judgments relied upon by learned counsel for respondent No.2 in Sartaj Singh's case (supra) and Neeraj Kumar @ Rocky's case (supra), are not applicable in the instant case as in Sartaj Singh's case (supra), the summoning of the accused as additional accused under Section 319 Cr.P.C. was based upon the testimony of injured/eye-witness, which does not, in any manner, supports the arguments raised by learned counsel for respondent No.2.

8. The material available on record, does not satisfy the test laid down in ***Hardeep Singh Vs. State of Punjab and others 2014 (3) SCC 92***, i.e. the existence of more than a prima facie case as exercised at the time of framing of charge, but short of satisfaction to the extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of any material suggesting existence of more than prima facie case available during the course of trial, 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 of India in ***Hardeep Singh(supra)*** has held that the power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised only on the basis of the material available before the



Court during a 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.

9. The Courts must evaluate the material against the person sought to be summoned and then adjudge whether such material, 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 material, the power under Section 319 Cr.P.C. ought not to be invoked. While relying upon ***Hardeep Singh(supra)***, a two Judge Bench of the Hon'ble Supreme Court in ***Juhru and others Vs. Karim and another (2023) 5 SCC 406***, speaking through Justice Surya Kant, has held as under:-

“16. It is, thus, manifested from a conjoint reading of the cited decision that power of summoning under Section 319 CrPC is not to be exercised routinely and the existence of more than prima facie case is sine qua 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 CrPC, 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, 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 CrPC ought not to be invoked.”

10. In view of the above, the present revision petitions are allowed and the impugned order dated 17.09.2021 passed by the learned Sessions Judge, Panipat, is set aside.



11. Nothing observed hereinbefore shall be construed as an expression of opinion on merits of the case.
12. Pending miscellaneous application(s), if any, shall also stand disposed of.
13. A photocopy of this order be placed on the file of other connected case.

(HARPREET SINGH BRAR)
JUDGE

02.04.2025
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No