



112

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

**CRR-2302-2023 (O&M)
Date of Decision: 30.07.2025**

Rajwinder Kaur

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Gaurav Chopra, Advocate for
Ms. Puja Chopra, Advocate
for the petitioner.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. Present revision petition has been preferred against the order dated 04.09.2023 passed by learned Sessions Judge, Ferozepur, vide which the application filed by the petitioner-complainant seeking summoning of respondents No.2 to 4 as an additional accused under Section 319 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [*now Section 358 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')*] to face the trial in FIR No.256 dated 15.11.2022 under Sections 302 & 34 of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station



Sadar Ferozepur, was dismissed.

2. Learned counsel for the petitioner, *inter alia*, contends that learned trial Court has not considered the application filed by the petitioner under Section 319 of Cr.P.C. (*now Section 358 of BNSS*) in the right earnest. The petitioner, who is the complainant in FIR (*supra*), specifically named respondents No.2 to 4 and also in her examination-in-chief recorded on 21.07.2023, she further reiterated her allegations that respondents No.2 & 3 exhorted the main accused Gurjeet Singh @ Bhola to commit the crime and they also hurled abuses. As such, there is sufficient material to indicate complicity of respondents No.2 to 4. Further, learned trial Court ought to have exercised the power under Section 319 of Cr.P.C. (*now Section 358 of BNSS*) by summoning respondents No.2 to 4 as additional accused to face the trial along with other accused. However, the application filed by the petitioner under Section 319 of Cr.P.C. (*now Section 358 of BNSS*) seeking summoning of respondents No.2 to 4 as additional accused was dismissed by erroneously ignoring the law laid down by the Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab, (2014) 3 SCC 92*** and ***Sugreev Kumar Vs. State of Punjab and others, 2019 (@) Law Herald (SC) 1047***.

3. *Per contra*, learned State counsel submits that veracity of the allegations made by the petitioner against respondents No.2 to 4 has been thoroughly examined and during the investigation, it has been found that the petitioner, in her initial statement, had not named them as accused and



their names cropped in during the supplementary statement made by her after 02 days. Further, the eyewitnesses of the occurrence, who are brother and cousin brother of deceased Ranjit Singh, have not named the private respondents No.2 to 4 in any manner. As such, allegations levelled by the petitioner were found unworthy of any reliance.

4. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that in the initial version set up by the prosecution, respondents No.2 to 4 were not named. Admittedly, they are not alleged to have caused any injury either to the deceased or to any other witness/eyewitnesses. The Investigating Officer, after conducting thorough investigation, concluded that presence of private respondents No.2 to 4 on the spot at the time of incident is not proved; rather at the time of occurrence, respondents No.2 & 3 had been found present at a place, which is 25 kilometers away from the place of occurrence and respondent No.4 was present at the shop of a car mechanic in Ferozepur Cantt. Once the Investigating Officer has thoroughly verified the allegations and investigated the case on the basis of supplementary statement and tower location of mobile phones of the private respondents, learned trial Court has rightly declined the application filed by the petitioner under Section 319 of Cr.P.C. (*now Section 358 of BNSS*) seeking summoning of respondents No.2 to 4 as additional accused to face the trial in FIR (*supra*). Moreover, the improvements made, while deposing before



learned trial Court, cannot form the basis for exercising the extraordinary power under Section 319 of Cr.P.C. (*now Section 358 of BNSS*). Mere statement of the complainant, which is not substantiated by any credible material, cannot be a ground to invoke the discretionary and extraordinary power of this Court to summon an additional accused under Section 319 of Cr.P.C. (*now Section 358 of BNSS*). 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 ought to refrain themselves from exercising its discretionary and extraordinary power under Section 319 of Cr.P.C. (*now Section 358 of BNSS*). The Constitution Bench of the Hon'ble Supreme Court in **Hardeep Singh's** case (*supra*) has held that the power under Section 319 of Cr.P.C. (*now Section 358 of BNSS*) is a discretionary and extraordinary power. It is to be exercised only on the basis of the material available before the Court during the 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.

5. In the absence of any credible material, the power under Section 319 of Cr.P.C. (*now Section 358 of BNSS*) ought not to be invoked. 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, while relying upon **Hardeep Singh's** case (*supra*) 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.

6. In view of the aforesaid facts and circumstances of the case, this Court does not find any merit in the arguments raised by learned counsel for the petitioner. Consequently, the impugned order dated 04.09.2023 passed by learned Sessions Judge, Ferozepur is hereby upheld.

7. Accordingly, the present revision petition is dismissed being bereft of any merit.

8. All the pending miscellaneous application(s), if any, shall stand disposed of.

30.07.2025
vishnu

[HARPREET SINGH BRAR]
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No