

**CRR-2944-2022(O&M)****-1-****246 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRR-2944-2022(O&M)
Date of decision: 08.01.2025****Jyoti****...Petitioner****Versus****State of Haryana and others****...Respondents****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR****Present:** Mr. Narender Kaajla, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG Haryana.

Mr. Ajay Nain, Advocate
for respondents No. 2 and 3.**HARPREET SINGH BRAR, J. (ORAL)**

1. The present revision petition has been filed for setting aside the impugned order dated 01.12.2022 passed by the learned Additional Sessions Judge, Hisar whereby, the application filed by the petitioner under Section 319 Cr.P.C. for summoning respondents No.2 to 13 as additional accused, in the case stemming from FIR No. 388 dated 16.09.2019 under Sections 147, 148, 307, 323, 341, 506 IPC at Police Station Azad Nagar, Hisar, has been dismissed.

2. Briefly, the facts are that on 15.09.2019, at about 9 PM, the petitioner-complainant along with her husband was going to the house of her brother-in-law namely Ram Niwas. When the respondents-accused saw them and started abusing them. When the husband of the petitioner objected to it, Dholia, Deva, Baljeet, Lucky and Ram Kumar caught him and Joginder @ Rinku hit him on the head with a brick. The petitioner



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raised hue and cry and one Parveen arrived at the spot, causing the respondents-accused to run away.

3. Learned counsel for the petitioner *inter alia* contends that only 04 out of the 16 assailants mentioned in the FIR(supra) have been arraigned as accused in the present case. The learned Court below has erred in dismissing the application of the petitioner to summon the remaining assailants as additional accused under Section 319 Cr.P.C. as specific roles have been attributed to the respondents-accused by the petitioner who is an eye witness. In fact, upon investigation, it was found that respondent No.2- Dholiya and respondent No.3- Lucky stopped the petitioner and her husband. However, for reasons known best to them, the police failed to arrest them. Further, the impugned order has been passed in violation of the ratio of law laid down by the Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab and others 2014 (3) SCC 92*** and ***Sartaj Singh vs. State of Haryana and another 2012(2) R.C.R. (Criminal) 527.***

4. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, it transpires that the petition qua respondents No.4 to 13 was dismissed as withdrawn vide order dated 19.05.2023. As far as respondents No. 2 and 3 are concerned, except for the statement of the petitioner-complainant, there is no material available on the record that indicates their culpability. In fact, the eye witness has failed to support the case of the prosecution and turned hostile. Further, FIR (supra) mentions 16 persons as accused, however, no specific role has been attributed to respondents No.2 and 3.

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5. This Court is of the considered opinion that the learned trial Court has passed a well reasoned order. The material available on record, does not satisfy the test laid down in ***Hardeep Singh's case (supra)***, 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's case (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.

6. The trial Court 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's case (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:-



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“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.”

7. In view of the above, the present revision petition is hereby dismissed and the impugned order dated 01.12.2022 passed by the learned Additional Sessions Judge, Hisar, is consequently, upheld as no ground for interference by this Court is made out.

8. Pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET SINGH BRAR)
JUDGE

08.01.2025

Ajay Goswami

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