



122 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-63961-2024
DECIDED ON: 10.01.2025

AMAR KUMAR
.....PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS
.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Mandeep Singh Sachdev, Advocate
for the petitioner.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023 has been invoked seeking quashing of the order dated 22.10.2024 (Annexure P-1) vide which, the application filed by the petitioner under Section 358 BNS, 2023 seeking summoning of respondent No.2, as an additional accused in case bearing FIR No. 37, dated 06.05.2007 (Annexure P-3), under Sections 406 and 34 of the Indian Penal Code, 1860, registered at Police Station Nathana, District Bathinda, has been dismissed as well as the order dated 07.12.2024 (Annexure P-2) passed by learned Additional Sessions Judge, Bathinda whereby, the revision petition filed by the petitioner for setting aside the order dated 22.10.2024 (Annexure P-1), has been dismissed.

2. **FACTS**

The present case originated from a complaint filed by Amar Kumar, who alleged that he and his brother, Prahlad Kumar, owned a Cotton Ginning and Pressing Factory located in Bhucho Mandi, established 39 years prior to the complaint. The factory housed various equipment, including a Sawgin Set, Marejan Imported machinery, condenser units, three local Sawgin machines, GI pipelines,

and additional machinery valued at approximately 15 to 16 lakh. The factory had been closed for several years, with one section rented out to the Food & Supplies Department, while the rental income was collected by M/s Ch. Surja Ram & Sons. Amar Kumar asserted that he had not visited the factory for the past two to three months due to his business commitments and last confirmed the presence of all machinery in May 2006. Subsequently, he learned from an informant that Sharda and her husband Ravi Kadan, along with Lal Singh, Surjit Kumar, and Salil Narayan, had allegedly conspired to commit theft. His manager, Madan Lal, informed him that all the aforementioned materials had been stolen. Consequently, FIR No. 37 was registered on May 6, 2007, at PS Nathana under Sections 406 and 34 of the Indian Penal Code. Following an investigation, charges were filed only against Ravinder Singh and Sharda Kadan on April 3, 2008.

3. **Contentions:-**

On behalf of the petitioner:-

It has been contended by learned counsel for the petitioner that the Investigation Agency has failed to include the names of certain accused individuals as requested by the complainant on 17.01.2007. It is argued that respondent No.2- Salil Narain, identified as a director (vendee), who allegedly produced an agreement to sell dated 12.01.2006, before Head Constable Jasbir Singh of the Economic Wing in Bathinda, which has been marked as PW-7D in the trial. On September 25, 2024, the complainant submitted another application under Section 311 Cr.P.C. to introduce additional documents, which was partially accepted by the court on September 30, 2024 (Annexure A1 to Annexure A5). The legitimacy of the aforementioned agreement is crucial for determining key issues in accordance with Section 354 of Cr.P.C. It is asserted that accused persons were convicted by the trial Court in FIR No. 74 of 2010, registered at Police Station Malout, which indicates

that respondent No.2-Salil Narain presented a false document through his manager during judicial proceedings.

Further assertion is that respondent No.2-Salil Narain's involvement is critical due to his production of an illegal agreement related to the petitioner's share in Bhucho Factory. Moreover, there is ample material evidence to justify summoning respondent No.2-Salil Narain as an additional accused alongside others.

4. Heard.

5. **Analysis**

Before proceeding with the matter, it is apposite to reproduce what has been contemplated in Section 319 CrPC, which reads as under:-

"...Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the Accused has committed any offence for which such person could be tried together with the Accused, the Court may proceed against such person for the offence which he appears to have committed."

The Constitution Bench of the Supreme Court in "**Hardeep Singh vs. State of Punjab**", (2014) 3 SCC 92, while illuminating the scope of Section 319 Cr.PC, laid down that:-

"57. Thus, the application of the provisions of Section 319 CrPC, at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 CrPC can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to herein above, adding a person as an accused, whose name has been mentioned in Column 2 of the chargesheet or any other person who might be an accomplice." xxxx xxxx xxxx

"105. Power under Section 319 CrPC 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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under [Section 319 CrPC](#). In [Section 319 CrPC](#) 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 CrPC](#) to form any opinion as to the guilt of the accused.”

In **Hardeep Singh** (supra), the Supreme Court eloquently held that the word “evidence” in [Section 319 CrPC](#) has to be broadly understood and thus materials which have come before the Court, in course of enquiry, can be used for (i) corroboration of evidence recorded by Court after commencement of trial; (ii) for exercise of power under [Section 319 Cr.P.C.](#); and (iii) also to add an accused whose name is shown in column no.2 of the chargesheet.

In **Sukhpal Singh Khaira vs. The State of Punjab, (2023) 1 SCC 289**, the Supreme Court succinctly explained the powers bestowed on the Court under Section 319 CrPC and ruled that:-

“15. At the outset, having noted the provision, it is amply clear that the power bestowed on the Court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the Court, if it appears to the Court that such evidence points to any person other than the accused who are being tried before the

Court to have committed any offence and such accused has been excluded in the charge sheet or in the process of trial till such time could still be summoned and tried together with the accused for the offence which appears to have been committed by such persons summoned as additional accused.”

The Constitution Bench refreshed the guidelines which, the competent court, must follow while exercising powers under [Section 319](#) CrPC and further ruled that:-

- (i) if the competent court finds evidence or if application under [Section 319](#) Cr.P.C. is filed, regarding involvement of any other person in committing the offence based on evidence “recorded at any stage in the trial” before passing of the order on acquittal or sentence, it shall pause the trial at that stage and the Court shall proceed to decide the fate of the application under [Section 319](#) Cr.P.C.;*
- (ii) if the Court decides to summon an accused under Section 319 Cr.P.C., such summoning order shall be passed before proceeding further with the trial in the main case and depending upon the stage at which the order is passed, the Trial Court shall apply its mind to the fact as to whether such summoned accused is to be tried along with other accused or separately; and*
- (iii) if the power under [Section 319](#) Cr.P.C. is not invoked or exercised in the main trial till its conclusion and if there is a split up case, such power can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated trial).*

10. After analyzing the *dicta* of the Constitution Benches in **Hardeep Singh** (supra) and **Sukhpal Singh Khaira** (supra), the Supreme Court in **Juhru v. Karim, 2023 SCC OnLine SC 171**, unequivocally held that:-

“17. 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 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 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.”

It, thus, comes out that the power of summoning under Section 319 CrPC is not to be exercised in a routine manner and the existence of more than a *prima facie* case is *sine qua non* to summon an additional accused and with a view to prevent the frequent misuse of power to summon, ordinarily, the Court should also discourage itself from summoning the person, at the very threshold of the trial, and must evaluate such material which has to be testified vis-à-vis the material against the accused who is already facing trial. In the absence of any credible evidence, the power under Section 319 CrPC, ought not to be invoked.

Coming back to the present case in hand, FIR No. 37, registered on 06.05.2007, was based on the complaint of Amar Kumar, who sought action against five individuals. However, only two were charged under Section 406 and Section 34 IPC. As the trial progressed, the complainant submitted an application under Section 319 Cr.P.C. to summon respondent No.2-Salil Narain as an additional accused, which was dismissed by the trial court vide order dated 27.01.2011 being premature with liberty to file again at appropriate stage. Subsequently, the petitioner filed another application for further investigation under Section 173(8) Cr.P.C. against Lal Singh, Surjit Kumar, and Salil Narain, which was also rejected vide order dated 11.03.2014, observing that it was intended to obstruct the trial. Additionally, there exists another FIR No. 74 registered on May 8, 2010, at Police Station City Malout against Salil Narain and others under Sections 420, 465, 467,

468, and 471 IPC related to a forged agreement to sell dated January 12, 2006. This FIR acknowledged Salil Narain as an accused.

Summoning of respondent No.2-Salil Narain is based on allegations of presenting false and backdated documents. However, the court observed that this case pertains to machinery theft at Bhucho Factory under Section 380 IPC and that the reasons for summoning respondent No.2-Salil Narain arise from a different context and cannot be combined with the current case. Furthermore, since there is already a pending case against him in Malout regarding the forged document, summoning him in this matter would constitute double jeopardy.

Moreover, in the present case the police investigation had determined that only Ravinder Singh Kadan and Sharda Kadan were implicated in the offence based on available evidence; thus, no charges were filed against Salil Narain or others.

6. **Conclusion:-**

In conclusion, this Court does not find any sufficient material to summon respondent No.2 as an additional accused in this case. Hence, the present petition is dismissed being devoid of any merits.

Accordingly, the impugned orders dated 22.10.2024 (Annexure P-1) dismissing the application under Section 358 BNS, 2023, filed by the petitioner as well as the order dated 07.12.2024 whereby, the revision petition filed against the order dated 22.10.2024, stands dismissed, are upheld.

(SANDEEP MOUDGIL)
JUDGE

10.01.2025
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No