

HIGH COURT OF PUNJAB AND HARYANA**Bench: Justice Harpreet Singh Brar****Date of Decision: 20th January 2024**

CRR No.552 of 2023 (O&M)

Sunil @ Sunil Kumar and others ... Petitioners**VERSUS****State of Haryana ... Respondent****Legislation:**

Sections 147, 149, 302, 323, 379B, 506, and 120-B of the Indian Penal Code (IPC)

Section 319 of the Cr.P.C.

Subject:

Revision petition against the summoning order for additional accused under Section 319 Cr.P.C. in a case involving alleged assault and resulting death, with the main contention on the appropriateness of summoning the petitioners based on the available evidence.

Headnotes:

Summoning of Additional Accused - Challenge against the summoning order under Section 319 Cr.P.C. by the petitioners in a case of alleged assault and death - FIR registered for various offenses including murder, rioting, and criminal conspiracy - Petitioners exonerated in initial investigation but summoned based on complainant's statement. [Paras 1-2]

Investigation and Final Report – The investigating agency, after thorough investigation, exonerated the petitioners, submitting a final report against other accused - Complainant's application under Section 319 Cr.P.C. for summoning additional accused accepted by trial court - Present criminal revision petition filed against this order. [Para 3]

Legal Arguments and Precedents – Petitioners' counsel argued against the sustainability of summoning order in absence of cogent evidence - Reliance on Supreme Court judgments emphasizing the necessity of strong evidence for summoning additional accused under Section 319 Cr.P.C. - Response by complainant's counsel highlighting prima facie satisfaction for summoning and reliance on Supreme Court judgment for interpretation of 'evidence' under Section 319 Cr.P.C. [Paras 3-4]

Court's Analysis and Decision – Examination of the complainant's statement in trial court revealed reiteration of FIR contents without specific role attribution to petitioners - No substantial new evidence against petitioners in trial - Trial court's duty to evaluate material against persons sought to be summoned - High Court set aside summoning order under Section 319 Cr.P.C. for lack of credible material against petitioners. [Paras 6-9]

Principle Upheld – Power under Section 319 Cr.P.C. is discretionary and extraordinary, to be exercised on the basis of material available during trial - Absence of credible evidence against a person sought to be summoned warrants non-exercise of this power. [Paras 7-9]

Decision: Impugned summoning order dated 02.06.2022 set aside; petition allowed.

Referred Cases:

- **Juhru and others Vs. Karim and another (2023) 5 SCC 406**
- **Hardeep Singh Vs. State of Punjab 2015 (1) RCR (Criminal) 623**

- **Brijendra Singh and others Vs. State of Rajasthan (2017) 7 SCC 706**
- **Sandeep Kumar Vs. State of State of Haryana and another 2023 SCC OnLine SC 888.**

Representing Advocates:

Mr. Gaurav Mohunta and Mr. Nishant Arora for the petitioners.

Ms. Geeta Sharma, DAG, Haryana.

Mr. Nikhil Ghai for the complainant.

HARPREET SINGH BRAR, J.

1. The present revision petition has been preferred against the summoning order dated 02.06.2022 passed by the learned Additional Sessions Judge, Hisar whereby the petitioners have been summoned as additional accused under Section 319 Cr.P.C. to face trial in FIR No.229 dated 29.06.2021 under Sections 147, 149, 302, 323, 379B, 506 and 120-B IPC registered at Police Station Agroha, District Hisar.
2. The aforementioned FIR was registered on the basis of statement made by the complainant wherein he alleged that on 28.06.2021 at 10 PM in night, when he and his father were sleeping in fields, his wife Radha along with his father-in-law Jarnail Singh son of Mukaddi, Mahender son of Mukaddi, his brothers-in-law Tony, Billa, Sunil and 5-6 other persons came in two vehicles and asked him to transfer the land in her favour to which he responded that he will do the needful. However, his wife exhorted her brother to kill him and his father whereupon all the aforesaid persons took out *lathis*, *dandas* and rods from the said vehicles and gave beatings to him and his father. His brothers-in-law namely Tony and Billa gave rod blows on his legs whereas other persons gave beatings to him as well as his father. They also snatched two mobile phones and Rs.4000/- from them. After causing injuries to them, they fled away from the spot. The complainant, after regaining consciousness, went to his village on tractor where he met Dharampal son of Lala, resident of Kanoh and narrated entire incident to him. He informed

the family members of the complainant, who reached on the spot. They shifted the complainant and his father to NAMC, Agorha for treatment. The complainant demanded strict action against the aforesaid persons. Later on, father of the complainant had succumbed to the injuries suffered by him. After investigation, the investigating agency submitted final report against Radha Rani, Gabbar, Gurpreet and Happy whereas Jarnail Singh, Mahender Singh, Mandeep son of Mahender Singh were exonerated and Billa brother of Radha Rani was declared proclaimed offender. The complainant moved an application under Section 319 Cr.P.C. for summoning Jarnail, Mohinder son of Mukandi, Tony, Sunil sons of Jarnail and Mandeep son of Mahender as additional accused, which has been allowed vide order dated 02.06.2022 passed by the Additional Sessions Judge, Hisar. Against the said order, the present criminal revision petition has been preferred.

3. Learned counsel for the petitioners submitted that after thorough investigation conducted by the investigating agency in the aforesaid FIR, petitioners were exonerated and therefore, in the absence of any cogent evidence, summoning of the petitioners as additional accused under Section 319 Cr.P.C. is not sustainable. The complainant in his examination-in-chief merely reiterated the version of FIR and no fresh material was brought on record to justify the summoning of the petitioners as additional accused. He relied upon the judgment passed by the Hon'ble Supreme Court in **Juhru and others Vs. Karim and another (2023) 5 SCC 406; Hardeep Singh Vs. State of Punjab 2015 (1) RCR (Criminal) 623** and **Brijendra Singh and others Vs. State of Rajasthan (2017) 7 SCC 706** to contend that in the absence of any authentic and credible evidence, the petitioners cannot be summoned as additional accused despite being named in the FIR and examination-in-chief. Further reliance was placed upon the judgments passed by this Court in CRR No.849 of 2023 titled as **Kuldeep Singh Vs. State of Punjab and others** decided on 02.02.2023 and CRR No.2518 of 2017 titled as **Parveen and another Vs. State of Punjab** decided on 02.06.2022.

¹ Per contra, learned counsel appearing for the complainant contended that the petitioners herein have been rightly summoned by the learned trial Court to face trial in the FIR supra, as in the FIR as well as in the examination-in-

chief, the complainant specifically mentioned that petitioners gave beatings to him and his father and due to said injuries, his father was passed away. It was further contended that at the stage of summoning an accused, there has to be a *prima facie* satisfaction of the Court. In support of his contention, he relied upon the judgment passed by the Hon'ble Supreme Court in **Sandeep Kumar Vs. State of State of Haryana and another 2023 SCC OnLine SC 888**. It was also contended that in view of the ratio of law laid down by the Constitution Bench of the Hon'ble Supreme Court in **Hardeep Singh's case** (supra), the expression 'evidence' under Section 319 Cr.P.C. means the evidence adduced before the of trial Court and the trial Court is not required to consider any other material except the deposition of the complainant for passing any order under Section 319 Cr.P.C.

4. I have heard learned counsel for the parties and perused the paper book with their able assistance.
5. A perusal of the examination-in-chief reveals that the complainant has reiterated the version of the FIR. The investigating agency after conducting investigation submitted the final report under Section 173 Cr.P.C. against Radha Rani, Gabbar, Gurpreet and Happy and on finding no evidence against Jarnail, Mahinder Singh, Tony, Sunil and Mandeep, exonerated them. Further, if the contention of the learned counsel appearing for the complainant is accepted even then the complainant while appearing before the learned trial Court did not attribute any specific role to the petitioners and he demanded only legal action against the petitioners. Summoning of a person as an additional accused under Section 319 Cr.P.C. merely on the statement made by the complainant without taking into consideration documentary and other evidence during the course of investigation warrants interference by this Court. The Hon'ble Supreme Court in **Brijendra Singh's case** (supra) has held that the trial Court is duty-bound to see as to whether much stronger evidence than mere possibility of complicity of the petitioner has come on record or not and in the absence of recording such satisfaction, the summoning order is not sustainable.
6. The FIR is not supposed to be an encyclopedia of the entire events and cannot contain the minute details of the events. Mere statement of the complainant reiterating the contents of FIR/complaint 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 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, 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 cae*** (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.

7. The trial Court must evaluate the material 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 material, the power under Section 319 Cr.P.C. 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.

8. In view of the aforesaid facts and circumstances, the impugned order dated 02.06.2022 is set aside and the instant petition stands allowed.

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