



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

CRR-2699-2024

Date of decision: 07.01.2025

Sahil

.....Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Raman Chawla, Advocate
for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana.

Mr. Bharat Julka, Advocate and
Ms. Sunita Devi, Advocate
for respondents No.2 and 3.

RAJESH BHARDWAJ, J.

1. Petitioner has approached this Court by way of filing the present petition impugning the order dated 13.11.2024 passed by the learned Additional Sessions Judge, Hisar wherein the application under Section 319 Cr.P.C. filed by the petitioner for summoning respondents No.2 and 3 i.e. Prahlad and Subhash as additional accused to face trial along with co-accused has been dismissed.

2. As per the facts of the case, FIR in the present case was lodged on the statement of the petitioner wherein he alleged that on 06.10.2023 at around 7/8 PM, his father and Prahlad Bavaria were drinking together near the Bridge Hisar Cantt. On seeing them drinking, he came home at about 08:00 PM. At about 9 o' clock, he met his father Dalip Singh near the Bridge who was in inebriated condition. His father told him that he had done his job and now he should live his life. He came home and found his mother lying on the cot covered with a blanket. She



did not get up in the morning and hence, he removed her blanket and found his mother Nirmala to be unconscious. He called his grandmother. It was alleged that he was sure that his father Dalip Singh after giving some intoxicant substance to his mother Nirmala strangulated her to death. It was prayed that his father and his other accomplices were involved in the murder of his mother and hence, legal action was sought to be taken against the culprits. On registration of the FIR, investigation was concluded however, the challan was presented against his father Dalip Singh whereas no evidence was found against rest of the accused and hence, they were found innocent by the investigating agencies. During the trial, complainant appeared as PW-4 who made the allegations against both the respondents namely, Prahlad and Subhash and thus, application under Section 319 Cr.P.C. was filed for summoning both these accused. Learned trial Court after hearing counsel for both the sides and finding no merit in the same, declined the application vide order dated 13.11.2024. Hence, being aggrieved petitioner has filed the present petition.

3. It has been contended by counsel for the petitioner that prior to the occurrence his mother Nirmala (deceased) had apprehended her death from the hands of her husband Dalip Singh and a complaint was made to the SHO but no action was taken. It is submitted that petitioner has made the specific allegations against both the respondents. However, the investigating agencies have not carried out free and fair investigation and thus, had illegally kept them in Column No.2 while presenting the report under Section 173 Cr.P.C. and thus, illegally declared them innocent. It is submitted that Dalip Singh was found drinking with Prahlad. He submits that while appearing as PW-4, petitioner had specifically deposed that at the time of occurrence Subhash and Prahlad



were standing outside their house. Thus, their complicity in causing the murder of his mother was duly established but the investigating agencies have declared them innocent. He submits that as per the law settled, the Court has power under Section 319 Cr.P.C. to summon both the accused as additional accused to face the trial along with Dalip Singh. He has placed reliance upon the judgment titled as *Omi @ Omkar Rathore and another Vs. The State of Madhya Pradesh and another, SLP(CrL) No.17781 of 2024* and submits that the impugned order being in violation of the law settled, deserves to be *set aside* by allowing the application under Section 319 Cr.P.C.

4. Learned counsel for respondents No.2 and 3 has vehemently opposed the submissions made by counsel for the petitioner. They have submitted that respondents No.2 and 3 were falsely named in the FIR. Free and fair investigation was conducted however, no material was found to substantiate the allegations made by the petitioner against respondents No.2 and 3 and thus, they were rightly declared innocent by the investigating agencies. It has been submitted that as per law settled, the power under Section 319 Cr.P.C. could not be invoked by the Court in a casual manner. Thus, they have submitted that there being no illegality in the impugned order, the petition being devoid of any merits, deserves to be dismissed.

5. Learned State counsel has supported the case of the petitioner and has stated that respondents No.2 and 3 are liable to be summoned.

6. This Court has heard counsel for the parties and perused the record. The precise issue involved in the present case is that whether the requisite parameters are fulfilled for summoning respondents No.2 and 3 as additional accused to face the trial along with the accused already



facing the trial. From the perusal of the record, it is evident that the complainant has made the specific allegations regarding murder of his mother against his father Dalip Singh. Learned counsel for the petitioner had emphasized that respondent Prahlad was drinking with his father Dalip Singh before the murder of his mother. The allegations made by the complainant were looked into by the investigating agencies. However, the same were not substantiated qua both the respondents and the material was found regarding Dalip Singh and hence, he was challaned in the report under Section 173 Cr.P.C. While appearing as PW-4 before the learned trial Court, petitioner had deposed that respondents Subhash and Prahlad were standing outside the house but this does not mean that they were involved in the crime.

7. For appreciation of application under Section 319 Cr.P.C., the statutory provisions of Section 319 Cr.P.C. reads as under:-

“319. Power to proceed against other persons appearing to be guilty of offence-

- (1) 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.
- (2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.
- (3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.
- (4) Where the Court proceeds against any person under sub-section (1), then-



(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

8. For invoking the power under Section 319 Cr.P.C., Hon'ble the Supreme Court in ***Hardeep Singh Vs. State of Punjab and others, 2014(1) RCR (Criminal) 623*** has held as under:-

98. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary 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.

99. 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 Cr.P.C. In Section 319 Cr.P.C. 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 Cr.P.C. to form any opinion as to the guilt of the accused.

9. It has been held by the Hon'ble Supreme Court that summoning under Section 319 Cr.P.C. is an extraordinary power which cannot be used in a cavalier manner and the same has to be used sparingly. The deposition made by the complainant in his examination-in-chief before the trial Court does not provide the evidence to the extent of fulfilling the requisite condition for summoning the respondents as an additional accused. In all its humility, there is no dispute regarding the judgment relied upon by counsel for the petitioner. However, in the facts and circumstances of the same, the same is distinguishable. As per the judgment relied upon by the petitioner, Hon'ble the Supreme Court had laid down the guidelines for invoking the power under Section 319 Cr.P.C. There is no dispute regarding the power of jurisdiction of Court invoking its powers under Section 319 Cr.P.C. however, the same is subject to the fulfillment of the requisite parameters which the petitioner has failed to qualify.

10. Thus, weighing the facts and circumstances of the case on the anvil of the law settled by the Hon'ble Supreme Court in **Hardeep Singh case (supra)**, this Court finds that the view taken by the learned trial Court suffers from no infirmity and hence, the petition being devoid of any merits is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(**RAJESH BHARDWAJ**)
JUDGE

07.01.2025
m. sharma

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