



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

CRR-2195-2018

Date of decision: 21.01.2025

Gurmail Singh

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Mohinder Kumar, Advocate
for the petitioner.

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

Mr. L.S. Lakhanpal, Advocate
for respondents No.2 & 3.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been filed for setting aside the impugned order dated 16.04.2018 passed by the learned Additional Sessions Judge, SAS Nagar (Mohali), Punjab, whereby, the application filed by the petitioner under Section 319 Cr.P.C. for summoning respondents No.2 & 3 as an additional accused, has been dismissed.

2. Briefly, the facts are that the petitioner was kidnapped and robbed by respondents No.2 & 3 along with other accused persons and he was forced at gun point to write suicide note and his signatures along with thumb impressions were obtained on blank papers. The petitioner was subjected to other illegal acts by the accused persons. It is further alleged that the motive behind this incident was a dispute regarding Sarpanchship. The dispute was going on between the petitioner and respondents No.2 & 3 and the aunt of respondent No.3 was contesting the election for Sarpanch against the wife of the petitioner.



Consequently, the criminal justice machinery was set in motion by registration of FIR in question.

3. Learned counsel for the petitioner *inter alia* contends that respondents No.2 & 3 were declared innocent without proper and fair investigation. Subsequently, an application under Section 319 Cr.P.C. was filed by the prosecution to summon respondents No.2 & 3 as an additional accused, however, the same was unfairly dismissed by the learned Court below vide impugned order dated 16.04.2018 which has been passed in violation of the ratio of law laid down in '**Hardeep Singh Vs. State of Punjab and others**' 2014 (3) SCC 92. The offence committed against the victim is heinous in nature and must be taken with utmost seriousness to create a deterrent effect.

4. Learned State counsel along with counsel for respondents No.2 & 3 submits that initially the petitioner has filed an application under Section 319 Cr.P.C. against four co-accused, however, the first application under Section 319 Cr.P.C. filed by the petitioner was dismissed *qua* respondents No.2 & 3. Thereafter, the petitioner again moved an application under Section 319 Cr.P.C. for summoning of the accused on the basis of some call detail record and no reliance can be placed upon such document as it is not established in what manner respondents No.2 & 3 can be connected with the phone number mentioned in the call detail record. In the absence of any material available on record, merely on the *ipse dixit* of petitioner, respondents No.2 & 3 cannot be summoned and they were not even named in the FIR.

5. Having heard learned counsel for the parties and after perusing the record, this Court finds no infirmity in the impugned order passed by the Court below. A perusal of the record clearly indicates that the impugned order was



passed by the learned trial Court on the ground that there is no substantive evidence against the private respondents who are sought to be summoned as an additional accused under Section 319 Cr.P.C. Moreover, there are no specific allegations against the private respondents and all the allegations levelled against them are general in nature, which are not corroborated by any other material or medical evidence. As such, the private respondents cannot be summoned by invoking the power under Section 319 Cr.P.C. only on the bald allegations made by the petitioner.

6. 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 crucial test in view of the ratio of law laid down in ***Hardeep Singh's case (supra)***, i.e. the test of there being more than a *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.

7. 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 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.

8. The trial Court must evaluate the material against the person sought to be summoned and then adjudge whether such material, more or less,



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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.”

9. In view of the above, no ground is made out to interfere in the finding given by the learned trial Court, and thus, the present petition stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

21.01.2025

Neha

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