



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

CRR-2055-2024

Date of Decision: **11.02.2025**

Vinod Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Proxy counsel for
Mr. Yashveer Kharb, Advocate
for the petitioner.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

Mr. Bhishm Singh, Advocate
for respondent Nos.2 and 3.

HARPREET SINGH BRAR, J. (ORAL)

1. This revision petition has been preferred against the order dated 15.04.2024 passed by learned Additional Sessions Judge, Panipat vide which, an application (Annexure P-5) filed by the petitioner under Section 319 Cr.PC for summoning of additional accused in case FIR No.491 dated 20.06.2020 under Sections 148/149/323/307/506 of IPC, 1860 (Annexure P-1) registered at Police Station Model Town, Panipat, District Panipat, has been dismissed.

2. Learned counsel for the petitioner, *inter alia*, contends that the learned Court below has not adverted to the factual matrix in the right perspective and refused to invoke the provision of Section 319 Cr.PC for summoning the private respondents as additional accused and name of both respondent Nos.2 and 3 have been specifically mentioned in the FIR(supra) along with other six persons but the investigating officer without assigning any

cogent reason has placed them in column No.2 after declaring them innocent and the application filed by the petitioner under Section 319 Cr.PC has been dismissed by the learned trial Court without assigning any reason. Further, the petitioner captured the picture of both respondent Nos.2 and 3 and prepared some video at the time of the incident in which respondent Nos.2 and 3 are seen present at the spot and the material has been handed over to the investigating officer, however, reason best known to him, he has not made them part of the final report under Section 173 Cr.PC.

3. Mr. Bhishm Singh, Advocate puts in appearance on behalf of respondent No.2 and 3 and filed Power of Attorney, which is taken on record. He submits that there is no material available on record which would satisfy the existence more than *prima facie* evidence pointing towards the complicity of respondent Nos.2 and 3 and it is a case of the petitioner that large number of persons have attacked him, out of which six persons have been named in FIR (supra). Except the bald allegations that respondent Nos.2 and 3 were present at the place of occurrence, there is no allegation against respondent Nos.2 and 3 that they participated in the alleged assault on the petitioner in any manner. He further submits that even in the statements made by two witnesses namely Raman and Rahul under Section 161 Cr.PC, names of respondent Nos.2 and 3 have not been mentioned. Lastly, learned counsel for respondent Nos.2 and 3 submits that there is no allegation with regard to respondent Nos.2 and 3 having played any active role in the alleged incident and mere their presence at the spot would not satisfy the existence of more than *prima facie* evidence as culled out by the Supreme Court in ***Hardeep Singh Vs. State of Punjab and others 2014(1) RCR (Criminal) 723 (SC)***.

4. Learned State counsel opposes the prayer and submits that the

learned trial Court has passed a well reasoned order after taking into consideration the allegations and the respective roles of respondents No.2 & 3.

5. I have heard the learned counsel for the parties and perused the case file thoroughly.

6. After going through the case file, it transpires that allegations against respondent Nos.2 and 3 is confined only to the extent that they were present at the time of the occurrence and mere their presence is not satisfying the test which has to be applied in exercising the power under Section 319 Cr.PC and the evidence required for summoning the accused as additional accused under Section 319 Cr.PC is one which is more than *prima facie* case and as such it requires much stronger evidence than mere probability of complicity of the accused to be summoned and the mere allegation in the absence of any other material or corroborations cannot be termed as more than *prima facie* evidence to summon respondent Nos.2 and 3 as additional accused while exercising the powers under Section 319 Cr.PC.

7. 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. 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. Accordingly, there is no perversity in the impugned order passed by the Ld. Trial Court and the present revision petition stands dismissed.

11.02.2025

Parveen kumar

(HARPREET SINGH BRAR)
JUDGE

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