



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

248

CRR-1058-2021 (O&M)

Date of decision: 04.07.2025

Sandeep @ Sandeep Sharma

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Keshav Pratap Singh, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

Mr. Deepender Singh, Advocate
and Mr. Akash Vashisth, Advocate
for respondents No.2 to 6.

HARPREET SINGH BRAR J. (Oral)

1. Prayer in this revision petition is for quashing the order dated 16.08.2021, passed by learned Additional Sessions Judge, Bhiwani vide which the application filed by the complainant for summoning Bajrang, Sonu, Neeraj, Rinku and Sombir has been dismissed, in case stemming from FIR No.86 dated 27.05.2017, registered under Sections 147, 148, 149, 307, 323, 325, 341 and 506 IPC at Police Station Bawani Khera, District Bhiwani.

2. As per the prosecution's case, on 27.05.2017 at about 06:30 AM, a violent incident occurred arising out of a long-standing family dispute between the complainant's family and that of Ram Avtar. It is alleged that the complainant's uncles, Sajjan and Surender sons of Deep



Chand, were returning on an Eicher tractor after procuring jawar seeds for sowing when they were intercepted and attacked near the fields by Ram Avtar and his family members, namely Bajrang and Sonu, sons of Ram Avtar, Dayanand and Neeraj, sons of Banarsi, Jai Parkash, Rinku, and Manjeet, sons of Jai Parkash, Hanuman son of Banarsi, Suresh son of Raghbir, Sombir son of Suresh, Surender son of Satbir, and Raju @ Raj Kumar son of Ram Kishan, all residents of village Baliyali. These individuals, allegedly armed with iron rods, axes, jellies, lathis, and dandas, forcibly stopped the tractor, pulled the victims off, and brutally assaulted them. Sajjan sustained injuries on his hands, elbows, legs, and head, while Surender was similarly injured on his calves, arms, and other parts of the body. The complainant, Sandeep, who was on his way to the fields on a motorcycle, witnessed the assault from a distance of about one acre. He raised an alarm and called his family. Upon seeing the people approaching, the accused persons fled away from the spot, threatening the complainant and escaped on a tractor. The injured were taken to Government Hospital, Bhiwani, by Sandeep, his brother Anirudh, and their father. Thereafter, the FIR (supra) was registered on the basis of the statement made by Sandeep. Thereafter, the challan/final report under Section 173 Cr.P.C., was presented against 08 accused and 05 accused were declared innocent by the police. Thereafter, charges were framed against the accused and while the injured namely Surender was examined by the learned trial Court on 23.01.2020 as PW-1, he has specifically named the persons i.e. respondents No.2 to 6, who caused



the injuries to him and his brother. Thereafter, an application under Section 319 of Cr.P.C. was filed by the complainant and the Public Prosecutor for summoning of accused i.e. respondents No.2 to 6 as additional accused, which was dismissed by learned trial Court vide impugned order dated 16.08.2021. Hence, this petition.

3. Learned counsel for the petitioner, *inter alia*, contends that the injured/witness namely Surender has specifically named respondents No.2 to 6 and have attributed specific role in his testimony recorded by the Investigating Officer under Section 161 Cr.P.C. Further, as per the cross-case set up by the accused party in a privately instituted complaint, the presence of respondents No.2 to 6 is admitted at the time of incident. Further, the learned trial Court has returned an incorrect finding with regard to allegations against the proposed accused/respondents No.2 to 6 being vague and general. The aforementioned finding is contrary to the record when the injured/witness – Surender has stepped into a witness box as PW-1, he has duly corroborated and reiterated the exact allegations against respondents No.2 to 6 as such, the learned trial Court ought to have exercised the powers under Section 319 Cr.P.C. by summoning respondents No.2 to 6 as additional accused. Surprisingly, when supplementary report under Section 173(2) of Cr.P.C. was filed before the Court concerned, no reasoning or any discussion is made on what basis, respondents No.2 to 6 have been declared innocent. The report is



completely silent and bereft of any reasoning regarding the innocence of respondents No.2 to 6.

4. Per contra, learned State counsel as well as learned counsel for respondents No.2 to 6 disputed the submissions made by learned counsel for the petitioner and argued that the perusal of the FIR (supra) indubitably does not spell out any specific role or injury against respondents No.2 to 6 and the statement of the injured recorded after 08 days is shrouded in doubt and have been made keeping in view the injuries noticed in the medico-legal report of the injured/witness. The injured/witness in a mechanical manner has nominated 13 persons of a family with respect to 13 injuries suffered by complainant party by attributing one blow each to all 13 accused.

5. Learned counsel for respondents No.2 to 6 further refers to the deposition of PW-1 Surender (injured) (Annexure P-10) and submits that the specific stand taken by learned counsel for the petitioner is apparently incorrect with regard to spelling out the detail of the injuries inflicted by respondents No.2 to 6 in as much as no injury or overt act has been alleged against respondent No.4 – Neeraj and respondent No.5 – Rinku. PW-1 – Surender has made material improvements in his testimony before the Court with regard to the injuries attributed to Sonu (respondent No.3). Initially, the allegations against him was of giving a blow with an axe which is a sharp edged weapon and when the injury on the head of Surender was found to have been caused by a blunt weapon, the version in this regard has been immediately improved by changing



the stand to have suffered the injuries from the reverse side and as such, the case set up by the complainant for summoning respondents No.2 to 6 is too far-fetched and does not pass the muster of the formula culled by the Constitution Bench in ***“Hardeep Singh vs State of Punjab”***, ***2014(3) SCC 92***, of having more than prima case. The veracity of the allegations after submissions of the final report under Section 173 Cr.P.C., were done at the behest of the petitioner as he was not satisfied with the report and the allegations were thoroughly examined by the senior officers and zimini in this regard were duly recorded in the police diary. As such, the submissions made by the learned counsel for the petitioner that no reasoning or investigation was carried out before declaring respondents No.2 to 6 as innocent is incorrect. The Investigating Officer if required could be confronted with the zimini entries/orders recorded in the police diary at the time of his deposition for the pursuit of truth and justice.

5. Having heard learned counsel for the parties and after perusing the record, this Court finds no force in the arguments advanced by learned counsel for the petitioner. It is no longer *res integra* that the powers under Section 319 of the Cr.P.C. must be exercised only after satisfying the existence of more than a *prima facie* case. The Hon’ble Apex Court in ***Hardeep Singh’s case (supra)***, has laid down the degree of satisfaction required at the time of summoning of a person/accused as an additional accused. The operative part of the said judgment, reads as follows:-



"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 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."

And further, while concluding, it was held as follows:-

"117.5 Though under Section 319 (4) (b) Cr.P.C., the accused subsequently impleaded is to be treated as if he had been an accused when the court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C would be the same as for framing a charge. The difference in the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C would be the same as for framing a charge. The different in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the



trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial- therefore the degree of satisfaction for summoning of accused (original and subsequent) has to be different."

6. It is to be understood that at the time of finding the merit whatsoever in the application under Section 319 Cr.P.C., more than *prima facie* case is to be established from the evidence led before the court which is not necessarily to be tested on the anvil of cross-examination. *Prima facie* standard is much stronger than mere probability of his complicity and the test that has to be applied is one which is more than *prima facie* as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. The Deputy Superintendent of Police has examined the veracity of the allegations made by the petitioner and the petitioner along with the witnesses were duly associated in the enquiry and mere probability that the petitioner may have participated would not satisfy the test as culled out by the Hon'ble Apex Court in ***Hardeep Singh's case (supra)***.

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, 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. The injured witness’s statements are inconsistent and lack the required ingredients to implicate respondents No.2 to 6 as additional accused. The mechanical attribution of injuries to multiple accused without concrete evidence weakens the prosecution’s case, and the delay in recording the statement further casts doubt on its credibility. The detailed investigation, including supplementary reports and zimini entries in the police diary, clearly reflects that the police and learned trial Court have duly considered all aspects before declaring respondents No.2 to 6 innocent and dismissing the application filed under Section 319 Cr.P.C. Further, the power to summon additional accused under Section 319 Cr.P.C. is discretionary and cannot be exercised on vague or general allegations without the existence of more than a *prima facie* case, as held in ***Hardeep Singh’s case (supra)***. Since the evidence on record does not meet this threshold, the trial Court’s order dated 16.08.2021 is upheld and the revision petition is accordingly dismissed.

(HARPREET SINGH BRAR)
JUDGE

04.07.2025

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No