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

Sr. No.201

CRR-3177-2017 (O&M)

Date of decision : 12.03.2025

Balram

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MS. JUSTICE KIRTI SINGH

Present: Mr. B.S. Dhankhar, Advocate for the petitioner.

Mr. Brijesh Sharma, AAG, Haryana.

Mr. Ravinder Hooda, Advocate, for the complainant.

KIRTI SINGH, J. (Oral)

1. The challenge, in the revision petition, is to the impugned order dated 29.08.2017, whereby application under Section 319 Cr.P.C. for summoning the petitioner and two others as additional accused, was allowed by the learned Addl. Sessions Judge, Palwal.
2. The FIR No.307 dated 11.06.2016, under Sections 363 & 366-A IPC was registered at the instance of one Mukesh Kumar. The translated version of the FIR is reproduced below:-

'To Shariman SHO Sahib, Police Station Hodal, District Palwal, subject-application for taking action against the accused. Sir, it is submitted that I Mukesh Kumar son of Parlahad caste jat, resident of Andhua Patti and do the agriculture work. Sir my niece Pinki daughter of Shri Mahipal resident of Madkana, Tehsil Hathain, District Palwal, who is aged 17-18 years, studies in the Maharani Kishore college, Hodal. She was residing with me, who went missing from home on 07.06.2016 in regard to which we enquired in our relations

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till now at our own level but could not trace out, now I have come to know that my niece Pinki has been abducted by Mahender son of Asha Ram caste jat resident of Bedha Patti, Karan son of Ghanshyam caste jat resident of Vijaygarh, Bholu son of Mohan caste jat resident of Bedha Patti, Balram son of Dharampal caste Bhgel resident of Bedha Patti and two other boys. It is therefore requested with folded hands that by rescuing my niece from the clutches of the accused, legal action be taken against them. I shall be grateful. Sd/- Mukesh, applicant Mukesh Kumar son of Parlahad aste jat, resident of Andhua Patti Hodasl, Palwal mobile 9034348765.'

3. After lodging of aforesaid FIR, the offences under Sections 376-D, 506 & 120-B IPC and POCSO Act were added during investigation and challan was thus presented under Sections 363, 366-A, 376-D, 506 & 120-B IPC and Section 6 of POCSO Act.

4. Learned counsel for the petitioner *inter alia* submits that the petitioner has been falsely implicated in this case and is not involved in the alleged occurrence. It is further submitted that during investigation, the petitioner was found to be innocent. The learned Addl. Sessions Judge, Palwal has absolutely misread the statement of the prosecutrix, in which she had categorically named four other persons, namely Karan, Bholu, Rohtansh and Arjun and the statement would reveal that the accused had called a person by the name of Balram to bring the money and on this statement alone, the petitioner has been summoned under Section 319 Cr.P.C. It has been argued that except for the said statement, the prosecutrix has not stated anything during trial or even thereafter against the petitioner at any stage. There is absolutely no evidence on record that could warrant the summoning of the petitioner. He also submits that application has been filed after a delay

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as the complainant and victim were examined on 08.03.2017 and 06.04.2017, respectively. It has also been argued that vide order dated 16.03.2018, the trial qua the co-accused has since been concluded and ended in his acquittal. Reliance has been placed upon a judgment passed by the Hon'ble Supreme Court in **Vikas Rathi Vs. State of U.P and another, 2023 (3) Criminal 700.**

5. Learned State counsel has submitted that during the course of investigation, Sections 376-D, 506 & 120 IPC and Section 4 of POCSO Act were added and the challan was filed under Sections 363, 366-A, 376-D, 506 & 120-B IPC and Section 44 of POCSO Act. He further submits that during the course of the investigation/verification conducted by the Deputy Superintendent of Police, Hodal, the petitioner was found innocent, hence he was kept in column No.2 and during the course of trial, the complainant Mukesh Kumar was examined as PW-9 and the prosecutrix was examined as PW-11 and thereafter, the petitioner and other two were summoned as additional accused by the trial Court vide impugned order dated 29.08.2017.

6. Heard learned counsel appearing for the parties and perused the paper book.

7. Before proceeding further, it is pertinent to discuss the observations made by the Hon'ble Supreme Court in some of its recent judgements. Discussing the scope of Section 319 Cr.P.C., the Constitution Bench of Hon'ble Supreme Court in case titled **Hardeep Singh Vs. State of Punjab, SC 2014(1) RCR (Criminal) 623** has laid down that:

"105. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so

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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.

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 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."

8. Hon'ble the Supreme Court in ***Brijendra Singh and Others Vs. State of Rajasthan, (2017) 7 SCC 706***, while summing up the ratio as laid down in Hardeep Singh's case (supra) has held as under:

"Power under Section 319 Cr.P.C. can be exercised by the trial Court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial Court finds that there is some 'evidence' against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The 'evidence' herein means the material that is brought before the

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Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect - of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima-facie opinion which is to be formed requires stronger evidence than mere probability of his complicity."

9. Hon'ble the Supreme Court later in 2019 relying on ***Hardeep Singh (supra) held in Periyasami and Others Vs. S.Nallasamy (2019) SCC Online SC 379*** that:

"The additional accused cannot be summoned under Section 319 of the Code in casual and cavalier manner in the absence of strong and cogent evidence. Under Section 319 of the Code additional accused can be summoned only if there is more than prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of conclusion of the trial convicting the accused."

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10. Recently Hon'ble the Supreme Court in case of ***Juhru & Ors. Versus Karim & Anr. 2023 AIR (Supreme Court) 1160*** observing the scope of section 319 Cr.P.C held that:

“It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a prima-facie case is sine quo 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 Cr.P.C., 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 is, 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 Cr.P.C. ought not to be invoked.”

11. The principles of law with reference to exercise of jurisdiction under 319 Cr.P.C. are well settled. As has been opined in a plethora of judgments, it is clear that the objective to invoke the powers under Section 319 Cr.P.C., is to not allow the real perpetrators of an offence to get away unpunished. In the light of evidence on record, viewed in light of the legal principles governing Section 319 Cr.P.C., this Court finds that the material adduced in the present case fails to establish the existence of even a *prima facie* case against the proposed accused. Trite to say that the power under Section 319 Cr.P.C. is extra-ordinary and must be exercised sparingly only when there is strong evidence on record, indicating the existence of more than a *prima facie* case against the person sought to be summoned. In the

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present case, the evidence presented does not meet the threshold required for summoning the petitioner as additional accused. Since mere mention of a person's name in the witness statement or allegations, without substantially corroboration, is insufficient. The main accused stand acquitted vide order dated 16.03.2018 and the necessary conditions for invoking Section 319 Cr.P.C. are not satisfied.

12. Accordingly, the petition is allowed and impugned order dated 29.08.2017 passed by the learned Addl. Sessions Judge, Palwal is set aside qua the petitioner-Balram.

Pending miscellaneous application(s), if any, also stands disposed of.

(KIRTI SINGH)
JUDGE

12.03.2025

Ramandeep Singh

Whether speaking / reasoned

Yes/No

Whether Reportable

Yes/No