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

CRR-912-2024 (O&M)

Date of Decision: 27.01.2025

Ruksar Heena

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Saleem Ahmed, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. Present revision petition has been preferred against the impugned order dated 04.07.2023 passed by learned Sessions Judge, Nuh, vide which the application filed by the petitioner-complainant seeking summoning of respondents No.2 & 3 as additional accused under Section 319 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [*now Section 358 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')*], in FIR No.178 dated 23.04.2021 under Sections 302, 341, 120-B of the Indian Penal Code, 1860 (for short 'IPC') [*now Section 103(1)*,



126(2), 61(2) of the *Bharatiya Nyaya Sanhita, 2023* (for short 'BNS')] and Section 25/54/59 of Arms Act, registered at Police Station Sadar Nuh, District Nuh, was dismissed.

2. Learned counsel for the petitioner, *inter alia*, contends that there are specific allegations against respondents No.2 & 3. In the statement recorded under Section 161 of Cr.P.C. (*now Section 180 of BNSS*), the petitioner specifically named respondents No.2 & 3, however, the police, after conducting the investigation, gave them clean chit. Even during the course of trial, the petitioner stated that his nephew was killed by Mosim and Wasim. As such, learned trial Court ought to have summoned respondents No.2 & 3 as additional accused to face the trial, by exercising the power under Section 319 of Cr.P.C. (*now Section 358 of BNSS*). It is further contended that in spite of the specific allegations against respondents No.2 & 3, learned trial Court ignored the evidence available on record and misread the statement of the petitioner. Learned trial Court has dismissed the application filed by the petitioner under Section 319 of Cr.P.C. (*now Section 358 of BNSS*) for summoning respondents No.2 & 3 as additional accused by means of a non-speaking order and by erroneously ignoring the law laid down by the Hon'ble Supreme Court in *Hardeep Singh Vs. State of Punjab, (2014) 3 SCC 92* and *Sugreev Kumar Vs. State of Punjab and others, 2019 (@) Law Herald (SC) 1047*.



3. *Per contra*, learned State counsel submits that veracity of the allegations have been thoroughly examined and the allegations qua complicity of respondents No.2 & 3 have been found false. As such, learned trial Court has rightly dismissed the application filed by the petitioner.

4. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the allegations made by the petitioner against respondents No.2 & 3 completely lack specificity, as no date and time has been mentioned. Moreover, the improvements made, while deposing before learned trial Court, cannot form the basis for exercising the extraordinary power under Section 319 Cr.P.C. (*now Section 358 of BNSS*). Mere statement of the complainant, which is not substantiated by any credible material, cannot be a ground to invoke the discretionary and extraordinary power of this Court to summon an additional accused under Section 319 of Cr.P.C. (*now Section 358 of BNSS*). In the absence of any material suggesting existence of more than *prima facie* case available during the course of trial of an offence, the Courts ought to refrain themselves from exercising its discretionary and extraordinary power under Section 319 Cr.P.C. (*now Section 358 of BNSS*). The Constitution Bench of the Hon'ble Supreme Court in *Hardeep Singh's* case (*supra*) has held that the power under Section 319 Cr.P.C. (*now Section 358 of BNSS*) is a discretionary and



extraordinary power. It is to be exercised only on the basis of the material available before the Court during the 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.

5. In the absence of any credible material, the power under Section 319 Cr.P.C. (*now Section 358 of BNSS*) 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.”

6. In view of the aforesaid facts and circumstances, this Court does not find any illegality or perversity in the impugned order dated 04.07.2023 passed by learned Sessions Judge, Nuh and the same is hereby upheld. Accordingly, the present revision petition is dismissed being bereft



of any merit.

7. All the pending miscellaneous application(s), if any, shall stand disposed of.

27.01.2025
vishnu

**[HARPREET SINGH BRAR]
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No