



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

121

**CRR-2688-2024 (O&M)
Date of decision: 05.03.2025**

Ankush

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Ajay Vijrania, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

1. The present revision petition has been filed against the impugned order dated 16.11.2024, passed by learned Additional Sessions Judge, Hisar, whereby an application under Section 319 of the Cr.P.C. filed by the complainant/prosecution seeking summoning of private respondents namely Saroj, Parmila, Monika, Aman, Sumit, Ankit, Ravi and Gaurav, as additional accused to face trial along with already challaned accused, has been dismissed in case FIR No.452 dated 04.08.2022 under Sections 148, 149, 216, 302, 365, 364, 120-B of the IPC, registered at Police Station Civil Lines, Hisar. The petitioner contends that the impugned order is perverse and contrary to the settled legal principles governing the summoning of additional accused under Section 319 of the Cr.P.C.

2. Before proceeding further, it would be apposite to discuss the scope and legal principles governing Section 319 of the Cr.P.C./358 of the BNSS. Section 358 of the BNSS empowers the learned Trial



CRR-2688-2024 (O&M)

Court to summon a person not originally named as an accused if, during the course of trial, evidence emerges indicating his/their complicity in the offence. However, this power is discretionary and extraordinary, to be exercised sparingly and only in compelling circumstances. Hon'ble the Supreme Court has, in a catena of decisions including ***Hardeep Singh Vs. State of Punjab, (Constitution Bench) : 2014(3) SCC 92***, laid down strict parameters for the exercise of this jurisdiction.

3. The key principles enunciated by Hon'ble the Supreme Court are as follows:-

(a) The standard of evidence required for summoning an additional accused under Section 358 of the BNSS is higher than required at the stage of framing of charge but lower than the threshold for conviction. The test is whether the evidence, if left unrebutted, would lead to conviction.

(b) The Court must be cautious in invoking the provisions of Section 358 of the BNSS, ensuring that the power is not misused to unnecessarily drag individuals in a criminal trial based on vague or uncorroborated allegations.

(c) Mere naming of a person in the FIR or their mention in the deposition of a witness during trial is not sufficient to invoke Section 358 of the BNSS unless there is substantive evidence demonstrating their active involvement in the commission of the crime.

(d) The presence of a person at the scene of crime, without a specific overtact attributed to him/her, is insufficient to invoke this provision.



CRR-2688-2024 (O&M)

4. The learned Trial Court in the impugned order has meticulously examined the material on record including the contents of the FIR as well as the examination in chief of the complainant who deposed as PW-1 and found that :

(i) the deposition of the complainant before the Court was a mere reiteration of his initial statement given to the police at the time of the registration of the FIR, lacking any additional incriminating material against the proposed accused;

(ii) the case of the prosecution itself is contradictory regarding the number of persons allegedly involved. While the FIR and evidence suggest that 18 to 20 persons emerged from two vehicles (Bolera Camper and a Ritz Car), the investigation by the police has already charge sheeted 17 accused. The inclusion of 08 additional accused would raise the total number of assailants to 25, which is highly improbable given the alleged mode of transport;

(iii) the complainant admitted that he had seen a video of the incident at the police station, wherein the persons visibly assaulting the victim were identified as Sachin, Sumit, Sonu, Mintu, Deepak, Sunil, Anil, Naveen, Pradeep and Ashish—all of whom are already facing trial. The proposed accused were not seen in the video, further weakening the case against them; and

(iv) the investigation was conducted by multiple officers at different stages, and after thorough examination of the evidence, the proposed accused were found innocent, leading to their exclusion from the charge sheet.



CRR-2688-2024 (O&M)

5. Learned counsel for the petitioner submits that the learned Trial Court erred in dismissing the application filed by the petitioner under Section 319 of the Cr.P.C. without properly appreciating the fact that the petitioner, who witnessed the crime in question, has consistently identified the alleged perpetrators including the private respondents. The petitioner had specifically named respondents No.2 to 9 and had clearly stated that they were present at the time of the alleged occurrence, both in the FIR and in his deposition before the learned Trial Court. It is further submitted that respondents No.2 and 3, being the wife and mother-in-law of the deceased, had a strong motive to commit the offence in question.

6. Learned counsel for the petitioner further contends that the findings of the learned Trial Court are based on surmises and conjectures. The learned Trial Court erroneously held that in the FIR, the petitioner had stated that the total number of assailants was about 18 to 20. The Court reasoned that summoning the 08 proposed accused as additional accused would raise the total number of accused persons to 25, including the 17 individuals already facing trial. However, the learned Trial Court failed to consider that the number mentioned in the FIR was merely an estimate and not an exact figure.

7. Additionally, it has been submitted by learned counsel for the petitioner that the learned Trial Court wrongly observed that such a large number of persons could not have been accommodated in two vehicles. However, the learned Trial Court overlooked the fact that one of the vehicles was Bolero Camper, which has the capacity to



CRR-2688-2024 (O&M)

accommodate a large number of persons. Therefore, the reasoning of the learned Trial Court on this aspect is misconceived and not based on a proper appreciation of the facts and evidence on record.

8. Adverting to the present case, upon a detailed examination of the material on record as well as the submissions made by learned counsel for the petitioner, this Court finds no infirmity in the reasoning adopted by the learned Trial Court while passing the impugned order.

9. While the complainant/petitioner has named the proposed accused in his FIR as well as during his testimony before the learned Trial Court, no specific role has been assigned to them in the actual commission of the offence. The settled law dictates that mere naming of a person, in the absence of a specific overt act is insufficient to invoke Section 319 of the Cr.P.C./Section 358 of the BNSS. Unless strong and convincing evidence emerges during trial, mere allegations in the FIR or in the testimony of a prosecution witness cannot justify summoning a personal as an additional accused. In the present case, the prosecution claimed that 25 persons emerged from two vehicles, armed with weapons such as sticks, iron rods, etc., which is implausible and self-contradictory. This inconsistency, coupled with the own admission by the complainant/petitioner that the proposed accused were not seen in the video which was shown to him at the police station, casts serious doubt on the veracity of the allegations against them. It needs to be categorically emphasized that Courts must be wary of mechanically adding accused persons based on exaggerated or improbable claims.

10. In the present case, multiple investigating officers had



CRR-2688-2024 (O&M)

independently concluded that the proposed accused were not involved, further diminishing the strength of the case of the prosecution. It is well settled that the Courts should be slow in summoning additional accused where the investigating agency, after due investigation, has not found sufficient material to implicate them. It needs to also be reiterated as has also been held by Hon'ble the Supreme Court in Sarabjit Singh Vs. State of Punjab : AIR 2009 SC 2792, that the power under Section 319 of the Cr.P.C. should not be used as a tool to unnecessarily subject individuals to criminal prosecution in the absence of strong and compelling evidence. The refusal by the learned Trial Court to exercise this extraordinary power vide impugned order was well within the legal framework and supported by sound judicial reasoning.

11. The learned Trial Court has correctly applied the principles laid down by Hon'ble the Supreme Court and has rightly exercised judicial restraint in declining to summon the private respondents/proposed accused. For the reasons discussed above, this Court finds no merit in the present revision petition, which stands dismissed accordingly.

12. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

13. Pending applications, if any, stand disposed of.

05.03.2025

Vinay

(MANJARI NEHRU KAUL)

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No