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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-35386-2015

Date of Decision : October 14th, 2015

Jasvir Singh @ Kaku

.... Petitioner

Versus

State of Punjab and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present Mr.Jaideep Verma, Advocate,
for the petitioner.

SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure to set-aside order dated 1.6.2015 [Annexure P/8] passed by learned Additional Sessions Judge, Ludhiana whereby, application under Section 319 Cr.P.C. filed by the prosecution was dismissed.

Relevant facts of the case, that the elder brother of the petitioner, namely, late Kulwant Singh was married to Karamjit Kaur about 8 years back and after the death of Kulwant Singh, as per decision of the Panchayat, it was decided that Karamjit Kaur will reside in the house of the petitioner as his wife. Thereafter, the present petitioner, namely, Jasvir Singh, Karamjit Kaur, Gurpreet Kaur and mother of petitioner, namely, Tej Kaur started residing in the same house. Gurwinder Singh son of Pritam Singh used to visit the house of the petitioner as he was working as

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Tubewell Operator. Karamjit Kaur started to develop illicit relations with Gurwinder Singh for the last 3-4 years and that fact was to the knowledge of entire village. Tej Kaur made complaint to the parents of Karamjit Kaur regarding her immoral activities. Later on, it was decided by the relatives that Karamjit Kaur would reside at her parental house in village Samad Bhai, District Moga and the petitioner as well as her mother would take care of the child, namely, Gurpreet Kaur. Karamjit Kaur left the house and started to reside with her parents. An affidavit dated 18.12.2013 was also executed for this purpose. Karamjit Kaur and her daughter were suffering from AIDs. This fact was disclosed about 8-9 months back. Karamjit Kaur and Gurwinder Singh continued with their relationship despite the fact that she had started living at her parental house. Even her parents opposed that relationship.

Gurwinder Singh visited the house of the petitioner in his absence and it was opposed by Tej Kaur. Karamjit Kaur and Gurwinder Singh held a conspiracy to eliminate Tej Kaur. On 27.7.2014 at about 10.30 AM, when the petitioner had gone to Raikot, Karamjit Kaur informed him regarding the murder of his mother. The petitioner rushed to his house and found the dead body of his mother lying on the floor. There were sharp injuries on her forehead, neck, head, shoulder and arms. Intimation was sent to the police. Karamjit Kaur confessed that she alongwith Gurwinder Singh had murdered Tej Kaur and even the weapon i.e. daat was recovered on the basis of her disclosure statement. Gurwinder Singh also confessed his guilt but later on, the police exonerated him. The matter was brought to the notice of Deputy Superintendent of Police by way of detailed complaint dated 1.8.2014, but no action was taken on the said

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application. Representations [Annexures P/1 to P/5] were made to the Senior Superintendent of Police, Jagraon. However, the police submitted final report against Karamjit Kaur only.

An application under Section 319 Cr.P.C. was filed before the trial Court and the said application was dismissed after considering the contentions of both the parties vide order dated 1.6.2015 [Annexure P/8]. Aggrieved of passing of the said order, the present petition has been filed by Jasvir Singh – complainant.

Learned counsel for the petitioner submitted that despite ample incriminating evidence against Gurwinder Singh for committing of murder of Tej Kaur, police had filed final report under Section 173 Cr.P.C. Against Karamjit Kaur only. The petitioner stepped into the witness-box as PW-1 and stated that Karamjit Kaur in connivance with Gurwinder Singh committed murder of his mother - Tej Kaur and there was ample incriminating evidence against both the accused. As per autopsy report, there were six sharp injuries caused to the deceased and such injuries could not be caused by a lady alone and this question was even put to the witness, but still the application was dismissed vide order dated 1.6.2015 and the said order be set-aside.

Having considered the submissions made by learned counsel for the petitioner, this Court is of the considered view that learned trial Judge has rightly come to the conclusion that Gurwinder Singh was found innocent during investigation. No recovery was effected from Gurwinder Singh though, he was joined for investigation. As such, no case is made out on the basis of application under Section 319 Cr.P.C. so as to summon him as additional accused in this case.

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Identical matter was before Hon`ble Supreme Court in of India in **Rajendra Singh Vs. State of U.P. & Anr. 2007[3] R.C.R. [Criminal] 1022** and it has been laid down that the power under Section 319 Cr.P.C. is not to be exercised in a routine manner, but the same is to be exercised sparingly or in exceptional circumstances. The Court is to see that there is some circumstance, material or evidence available on the file calling for summoning any body as an additional accused and not merely on the asking of any party to the litigation. For that purpose, the Court is not to be satisfied on the basis of *prima facie* case only but there should be sufficient material that may convince the Court to summon any body as an additional accused. Summoning of additional accused under Section 319 Cr.P.C. is such a power which cannot be exercised in routine manner but in exceptional cases only and that has been left to the judicial discretion of the Court. In the case in hand, learned trial Judge has rightly exercised its discretion in this case while passing the order under challenge. The discretion exercised by learned trial Judge was based on reasoning given in the order dated 1.6.2015 [Annexure P/8]. The same does not call for any interference by this Court by way of the present petition and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

October 14th, 2015
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