

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

**Criminal Revision No.2007 of 2012 (O&M)
Date of decision: 09.09.2015**

Pritpal Singh @ Sonu

..Petitioner

Versus

State of Punjab

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Mr. S.S. Ranghi, Advocate
for the petitioner.

Ms. Ritu Punj, Addl. AG, Punjab
for the respondent – State.

Daya Chaudhary, J.

The present revision petition has been filed to challenge the impugned order dated 27.04.2012 passed by Judicial Magistrate Ist Class, Gurdaspur, whereby the application moved by the prosecution under Section 319 Cr.P.C. has been allowed and the petitioner has been summoned to face trial in case FIR No.247 dated 07.09.2007 registered under Sections 304-A and 337 IPC at Police Station Dinanagar.

The aforesaid FIR was registered on the basis of statement of complainant-Sarabjit Singh wherein it was alleged that the complainant along with his grandson, namely, Rupinder Singh @

Rimi was going on motorcycle Hero Honda Passion Plus bearing registration No. PB-06G-4491 to Punjab and Sind Bank, Dinanagar. While returning back to their village, one Surjit Singh, who was grand uncle of the complainant, met them at the chowk of Sind Bank and started following them. When they reached near the Bus Stand of Dinanagar, the driver of an Indica car bearing registration No. PB-08-AF-6887, which was already standing, suddenly opened its window and Rimi turned his motorcycle to right side and applied brakes to save themselves. At the same time, a truck bearing registration No. PB-03-P-9721 was also coming from behind and it was being driven rashly and negligently at a high speed. Without blowing any horn, it was struck against the motorcycle because of which, Rimi fell down from the motorcycle towards his right side and he was dragged by the truck to some distance. Resultantly, Rimi died under the truck as his head was totally crushed due to coming under the truck trolly and complainant also received scratches. The car driver ran away with the car and the driver of the truck also succeeded in fleeing by leaving the truck. On the basis of statement of the complainant, the FIR was registered and the investigation was conducted. Thereafter, charges were framed on 15.11.2007. Statement of complainant-Sarabjit Singh was recorded wherein it was mentioned that the driver of the car was also involved in commission of the offence as due to his rash and negligent act, the accident occurred. After recording statement of complainant as PW1, an application was moved by the prosecution

under Section 319 Cr.P.C. for summoning the petitioner as an additional accused to face trial and the same was allowed vide order dated 27.04.2012, which has been challenged before this Court by filing the present revision petition.

Learned counsel for the petitioner submits that in the statement, even a single word was not mentioned by the complainant against the present petitioner and there was no rash and negligent act on the part of the petitioner. The Indica car was standing at the side of the road and the accident occurred due to rash and negligent driving of the truck driver. Learned counsel further submits that the window of the car was opened accidentally when the deceased was passing from there because of which, he lost control of the motorcycle and took it to right side whereby he was hit by the truck trolly and was crushed under it. It is also the argument of learned counsel for the petitioner that there is no evidence regarding the rash and negligent act of the petitioner as only in the cross-examination, the complainant has stated that they had fallen due to opening of the window of the Indica car. In case, the window had not opened, they would have crossed. Learned counsel also submits that the provisions of Section 319 Cr.P.C. can only be invoked when there is likelihood of conviction of the accused sought to be summoned but in the present case, not even a single word has been mentioned to show the satisfaction of the Summoning Court except the words that "some material had come on record to justify the summoning order". It is also the argument of

learned counsel for the petitioner that the cognizance as per impugned order has been taken after a lapse of more than four years and eight months whereas no cognizance of the offence can be taken after expiry of period of limitation as has been held by this Court in **Amit Kumar Mathur vs. State of U.T. Chandigarh, 1997(3) RCR (Criminal) 589**. Learned counsel for the petitioner also submits that a claim petition was also filed before the Motor Accident Claims Tribunal, Gurdaspur by claimant-Narinder Kaur, mother of deceased, against Nachhatar Singh, Rachhpal Singh as well as Insurance Company and the name of present petitioner was not there. Learned counsel for the petitioner has also relied upon judgment of Hon'ble the Supreme Court in **Narsingh Das Tapadia vs. Goverdhan Das Partani, 2000(4) RCR (Criminal) 39**, judgments of this Court in **Amit Kumar Mathur vs. State (U.T. Chandigarh) 1997(3) RCR (Criminal) 589**, **Devender Gupta vs. State of Haryana and another, Criminal Misc. No. M-5576 of 2009 decided on 26.03.2013, Baljit Singh vs. State of Punjab and another, 2006(3) RCR (Criminal) 311**, **T. Amudha Sidhanathan and another vs. Union Territory, Chandigarh, 2008(1) RCR (Criminal) 628**, judgment of the Delhi High Court in **Gurdeep Singh vs. State and others, 1990(3) RCR (Criminal) 289** as well as judgments of the Andhra Pradesh High Court in **Kamru and another vs. State of Rajasthan and another, 2009(3) RCR (Criminal) 991**, **Kimberly Clark Liver Ltd. vs. State, 2006(4) RCR (Criminal) 432** and **Ahmed Nawaj Alladin vs. Station**

House Officer, Team-1, Vidyut Soudha, Hyderabad, 1999(3) RCR

(Criminal) 40 in support of his contentions.

Learned State counsel submits that as per provisions of Section 304-A IPC, the present petitioner was also negligent as due to his negligent act, the accident had occurred resulting into death of deceased. The present petitioner was also equally responsible for causing death of deceased-Rupinder Singh and he has rightly been summoned under Section 319 Cr.P.C.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the impugned order of summoning.

Admittedly, the aforesaid FIR was registered against Nachhatar Singh, the driver of the truck. In the statements of PW1-Sarabjit Singh and PW2-Surjit Singh, it has been mentioned that the driver of the Indica car was also involved as the accident occurred because of his negligent act. The driver of the truck as well as driver of the Indica car were involved in commission of offence. During examination of PW1-Sarabjit Singh, it has been mentioned that the present petitioner was also equally responsible for causing death of Rupinder Singh. Even in the statement of witnesses recorded under Section 161 Cr.P.C., the name of petitioner was there. The challan was not presented against the petitioner as the same was presented only against the driver of the truck. Subsequently, after recording of statements of PW1-Sarabjit Singh and PW2-Surjit Singh, an

application under Section 319 Cr.P.C. was moved by the prosecution for summoning of the petitioner as an additional accused to face trial along with accused Nachhatar Singh, who is already facing trial.

For facilitation, Section 319 Cr.P.C. is reproduced as under: -

“319.Power to proceed against other persons appearing to be guilty of offence.-

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an

accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

As per provisions of Section 319 Cr.P.C., any person against whom the evidence has been brought on record and there is likelihood of his conviction can be summoned to face trial along with other accused, who are facing trial.

For summoning of an additional accused, it is to be seen by the Summoning Court that some evidence has been brought on record, which shows that the person sought to be summoned is also involved in commission of offence or some material or evidence has come on record to justify the summoning order. Not only it is mentioned in the complaint made by the complainant, on the basis of which, FIR was registered but it has also come in the statements of PW1 and PW2 that the accident occurred due to act of the present petitioner also. After considering the evidence available on record, the petitioner has been summoned to face trial vide the impugned order. The judgments relied upon by learned counsel for the petitioner are not relevant to decide the controversy involved in the present case as the issue of summoning of additional accused has not been dealt therein.

As far as argument of period of limitation is concerned, there is no provision under Section 319 Cr.P.C. to show that after a particular period, summoning order cannot be passed. As per

provisions of Section 319 Cr.P.C., it is to be seen by the Summoning Court that in case, any material or evidence come before the Court, which shows that the involvement of said person is there in commission of offence, then that person can be summoned. It may be during inquiry, trial or other proceedings. The period of limitation is not relevant in case of summoning of an accused.

The argument of learned counsel for the petitioner that the present petitioner was not party in the claim petition, as such, he cannot be summoned under Section 319 Cr.P.C., cannot be accepted as for summoning of an additional accused it is to be seen that some evidence has come on record showing involvement of said person in commission of the offence and on the basis of said evidence, he can be tried along with other accused, who are already facing trial. In case, no claim petition has been filed against the petitioner, it cannot debar the prosecution to take action or to avail remedy of Section 319 Cr.P.C.

In the present case also, the accident occurred due to rash and negligent act of the present petitioner as he had accidentally opened the window of the Indica car, due to which, the motorcycle of the deceased struck with the truck being driven in a rash and negligent manner. Moreover, for summoning, only it is to be seen that on the basis of material and evidence, the person sought to be summoned is also involved in commission of offence.

Accordingly, there is no illegality in the impugned order

passed by the Summoning Court and as such, there is no merit in the contentions raised by learned counsel for the petitioner and the revision petition being devoid of any merit is dismissed.

However, it is made clear that nothing stated hereinabove shall be construed as an expression of opinion on the merits of the case during trial or other proceedings of the case.

09.09.2015
neetu

(DAYA CHAUDHARY)
JUDGE