

218

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

**CRR No.2780 of 2013
Date of Decision: 03.07.2015**

PARVEEN KUMAR

.....Petitioner

Vs

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Sudhir Sharma, Advocate
for the petitioner.

Mr. Varun Sharma, A.A.G., Punjab.

Mr. Narinder Singh, Advocate
for respondents No.2 and 3.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Petitioner assails order dated 14.08.2013 passed by Additional Sessions Judge, SAS Nagar, Mohali vide which prayer for summoning respondents No.2 and 3 as additional accused under Section 319 Cr.P.C., has been dismissed. Petitioner is author of FIR No.35 dated 25.05.2011, under Section 302/34 IPC, Police Station Phase XI, SAS Nagar, Mohali.

[2]. In the aforesaid FIR, petitioner/complainant alleges that he is doing work of Halwai in Ambala Cantt. His sister Sonia Sharma was married to Rajiv Sharma-respondent No.2. Two children took

birth from this wedlock. Elder daughter is about 15-16 years of age and younger son is about 12-13 years of age. Both the children are studying in Doon School, Mohali and are living in hostel because of strained relations between the couple. Litigation was pending between sister and brother-in-law of petitioner in respect of fraudulent divorce taken by Rajiv Sharma. Due to intervention of Panchayat the matter was compromised but Rajiv Sharma kept on giving threats to the sister of petitioner.

[3]. On 24.05.2011 sister of the complainant along with neighbour went to the Court at Chandigarh in respect of attending court proceedings in a maintenance matter. The sister of petitioner told his father about the presence of Rajiv Sharma in Court and she showed her apprehension of being harmed by Rajiv Sharma. At about 10.00 p.m. father of petitioner talked on phone to Sonia Sharma. In the morning at about 8.30 a.m. a telephone call came on the landline phone from one Bhupinder Kumar @ Bobby, disclosing that in the night at about 12.00 a.m. to 1.00 a.m. Sonia Sharma made call to him but the same could not be completed and there was a noise from her behind regarding falling of some articles. Thereafter the mobile phone of Sonia Sharma (sister of petitioner) was switched off.

[4]. Aforesaid Bhupinder Kumar @ Bobby made call to mother of petitioner and asked for another mobile number of Sonia Sharma so that she can be contacted. The mother of petitioner asked him to go to the house of Sonia Sharma immediately in order to inquire

things. Thereafter at about 9.30 a.m. Bhupinder Kumar @ Bobby told that door of the house was bolted from outside and on opening, he saw that dead body of Sonia Sharma was lying smeared with blood in front of kitchen. At about 10.30 a.m. parents of complainant also reached the spot and found dead body of Sonia smeared in blood and her throat had been cut with some sharp-edged weapon.

[5]. Complainant pleaded that he had full suspicion that his brother-in-law Rajiv Sharma in connivance with his brother Vinod Sharma had murdered Sonia Sharma. The dispute was pending in Court in respect of maintenance and vacation of house. Rajiv Sharma was continuously giving threats to his sister Sonia Sharma for getting the house vacated. With this background, FIR in question came to be registered.

[6]. Complainant further alleges that the Police acted totally indifferently in conducting the investigation. Challan was presented only against Bhupinder Kumar @ Bobby on 12.08.2011 whereas Rajiv Sharma and Vinod Sharma were allegedly found innocent.

[7]. During the course of investigation, the Police demarcated the site and collected incriminating articles. Accused Bhupinder Kumar @ Bobby stated to have confessed the guilt before one Rishab Jain. The hair of the deceased were subjected to forensic test and were found to be of human scalp, showing positive characteristics. The respondents No.2 and 3 i.e. husband of the deceased and his brother were let off only on the alleged confession made by Bhupinder Kumar @ Bobby without adhering to other

aspects of the case. In fact deceased Sonia Sharma was brutally murdered in the night of 24/25 of May 2011 by Bhupinder Kumar @ Bobby in active connivance with respondents No.2 and 3.

[8]. Respondent No.2 was all out to get the possession of house vacated from the deceased as well as to get rid of her from Court cases filed against him. In the past also respondent No.2 had attempted to get rid of deceased Sonia Sharma. Respondents No.2 and 3 have been specifically named in the FIR. Court cases were pending between Sonia Sharma and Rajiv Sharma-respondent No.2 even on the date of murder. Proceedings under Domestic Violence Act for maintenance were also pending in the Court of Judicial Magistrate Ist Class, Chandigarh where respondent No.2 had to appear but he did not appear despite his presence in Chandigarh and the case was adjourned to 06.06.2011.

[9]. The Complainant also pleaded that in the year 2001, respondent No.2 tried to finish Sonia Sharma by administering poison but due to pressure of the family, the matter was not reported to Police under a hope that relations may survive. Sonia Sharma remained in PGI, Chandigarh for six days in 2001 and thereafter she was discharged. Thereafter respondent No.2 had obtained divorce by playing fraud upon Sonia Sharma and as a result of that FIR No.123 dated 23.05.2005 under Sections 376, 467, 468, 471, 120-B IPC was registered at Police Station Parao District Ambala.

[10]. Another FIR, was also statedly registered on 27.07.2005 under Sections 323, 325, 452/34, 506 IPC, Police Station Parao

District Ambala on the statement of Kamlesh Sharma, mother of the deceased against Santosh, Jeenu, Shanki @ Lovkesh, Kamla, Shakuntla and Buntly all relatives of respondents No.2 and 3.

[11]. In the proceedings of anticipatory bail in the said case, parties entered into compromise and respondent No.2 agreed to live together as husband with Sonia Sharma. Compromise was executed on 29.08.2005 and respondent No.2 and Sonia Sharma executed affidavit to that effect. On account of aforesaid compromise respondent No.2 again got married with Sonia Sharma on 05.05.2006 and a certificate of marriage was also issued by the Registrar of Marriages, Ambala. The father of the petitioner also gave Rs.6 lacs to respondent No.2 for purchasing a house so that the couple may live peacefully.

[12]. After the aforesaid compromise parties started living in House No.1408/8, Phase XI, Mohali, Punjab and from there they shifted to House No.2022, Sector 45-C, Chandigarh. Sonia Sharma had moved numerous complaints to SSP, Chandigarh regarding maltreatment and harassment meted to her by her husband. Respondent No.2 in order to go abroad got divorce from Sonia Sharma by playing fraud upon her but fortunately he could not arrange visa, otherwise he would have fled away from India. In the complaint filed by Sonia Sharma before SSP, Chandigarh she disclosed tendency of respondent No.2 to commit fraud and cheating. She also disclosed that he has kept three different passports containing fabricated addresses. She had also moved

application to DSP, CID Chandigarh for knowing the outcome of her complaint filed before SSP, Chandigarh. Vide office letter No.18/CID UT dated 07.02.2011 DSP, CID, Chandigarh informed her that inquiry was being conducted by Inspector CID, Chandigarh and the same would be completed very soon.

[13]. On 28.03.2010 respondent No.2 had issued public notice regarding missing of Sonia Sharma on 13.03.2010 and labelled her to be characterless. He had also lodged DDR No.15 dated 15.03.2010 in Police Station Burail and declared that she had no relation or connection with his movable or immovable properties. In the aforesaid information, respondent No.2 had virtually disowned Sonia Sharma. He had also filed complaint dated 25.05.2010 against Sonia Sharma before the Police. Respondent No.2 was bent upon to get the house vacated by all foul means. In the complaint filed by Sonia Sharma, Police investigated the matter and also recorded her statement as well of her parents. Respondent No.2 with all *mala fide* intention showed one Manjit Singh to be owner of house No.1408/8, Phase XI, Mohali. In the complaint dated 05.01.2011 filed by Sonia Sharma before SSP Mohali, DSP conducted inquiry and reported to SSP, Mohali. Complainant submits that all the aforesaid events are suggestive of the fact that relation between Sonia Sharma and respondent No.2 were not cordial. Respondent No.2 was also indulged in *tantrik jadu tona* activities and had good number of following from India and abroad and he used to earn money besides having links with high ups. He was always in search of an

opportunity to settle abroad.

[14]. According to complainant, the complicity of respondents No.2 and 3 in addition to aforesaid background can be appreciated from the fact that on the date of brutal murder, Sonia Sharma was having mobile No.9888182143 and Bhupinder Kumar @ Bobby was having mobile no.9888731892. Call details of the mobile phone of Sonia Sharma revealed that Bhupinder Kumar @ Bobby was trying to contact on her mobile throughout the day on 24.05.2011, however Sonia Sharma was not talking to him as she was in Court premises where her case for maintenance against Rajiv Sharma was pending. Sonia Sharma was also trying to contact her husband on mobile No.98148848944. Respondent No.2 despite being present in Chandigarh, intentionally did not attend the Court. From unknown mobile number i.e. 9803900515, four calls were made in the intervening night of 24/25th May 2011, on the mobile number of Sonia Sharma for a duration of 246, 246, 457 and 12 seconds respectively. After the last call, Sonia Sharma immediately made two calls on mobile No.9417609911 at 00:15:19 p.m. and 00:20:13 p.m and number was belonging to the brother-in-law of the deceased i.e. real brother of respondent No.2 for a duration of 295 and 91 seconds respectively. Again from that unknown number two calls were received by Sonia Sharma just after four minutes for a duration of 34 and 16 seconds.

[15]. Learned counsel submits that the aforesaid data shows that all six calls were made from mobile No.9803900515 about 10-15

minutes prior to her death and Sonia Sharma had intimated respondent No.3 on mobile number 9417609911 regarding the conversation on the aforesaid unknown mobile number. It has been stressed that the said unknown mobile number was that of respondent No.2. Certain SMSs, messages were also received from that unknown mobile number to the mobile number of deceased Sonia Sharma.

[16]. According to learned counsel for the petitioner the Police has not investigated in the aforesaid context in order to establish link evidence. The number of mobile phones kept by the accused-respondents No.2 and 3 were not investigated. Pointed allegations are that the Police did not investigate the case impartial. The Petitioner made representation to the SSP, Mohali on 24.07.2011 even before filing the challan. Another representation was filed on 14.09.2011 after filing of challan but the Police remained totally indifferent in the aforesaid context.

[17]. The alleged extra-judicial confession of Bhupinder Kumar @ Bobby is nothing but a farce. Respondents No.2 and 3 were never associated by the Police in investigation nor were arrested or interrogated in any manner. They even did not join the last rites of Sonia Sharma. On 24.05.2011 respondent No.2 took out both children from boarding School i.e. Doon International School, Mohali which also created semblance of evil design of respondent No.2. Respondent No.2 hired the services of Bhupinder Kumar @ Bobby.

[18]. Seeing the pathetic attitude of the Police, petitioner filed

CRM-M No.3001 of 2012 seeking directions for further investigation.

Petitioner was allowed to approach the competent Authority for seeking appropriate relief vide order dated 01.02.2012. Thereafter petitioner approached the Court of Additional Sessions Judge, SAS Nagar, Mohali by way of filing an application for further investigation. The Court took cognizance on the said application and vide order dated 29.03.2012 passed a detailed order after deliberating the issue of conversation on mobile phones and ordered to get further investigation taken in the light of the observations made in the order.

[19]. Police was directed to take immediate steps to collect call details pertaining to the mobile phone used and for preservation of the same. Additionally it was also ordered that the call details of any other persons with whom the Sonia Sharma had any conversation on mobile phone be also investigated. The report was ordered to be submitted in the Court on or before 26.04.2012. The Police even despite the order did not properly investigate the case and in order to hush up the matter Investigating Officer gave three reports dated 07.05.2012, 16.05.2012 and 03.07.2012 alleging that call detail record of mobile phone No.9417609911 were tampered. The Police has lost sight of the fact that respondent No.3 (brother of respondent No.2) is a regular employee of BSNL and by exerting influence, respondent No.3 had got the relevant call details tampered. As per report dated 16.05.2012 tower location of respondent No.2 was found to be in Panchkula only. The accused Bhupinder Kumar @ Bobby was also in Panchkula at the relevant time.

[20]. On the basis of first call report, trial Court passed an order dated 31.05.2012 in the following manner:-

“The Court had specifically observed that the Police should take immediate steps to get the call record of the said mobile phone preserved. It appears that the Investigating officer has failed to take necessary action. Under these circumstances, SSP, SAS Nagar Mohali is again directed that further investigation in the light of observations made above be got conducted. The call record of the aforesaid mobile phone should be obtained and even said person should be joined into the investigation as he was regularly in touch with deceased Sonia. The report should be submitted in the Court on or before 04.07.2012. The copy of this order be sent to SSP, SAS Nagar Mohali for compliance. Further it is ordered that remaining prosecution witnesses be also summoned for the date fixed as it would not be proper to keep the trial in abeyance.”

[21]. Despite clear direction by the trial Court, the local police was adamant to investigate the case properly and that prompted the petitioner to file CRM-M No.23921 of 2013 for transfer of further investigation to some independent Agency. The High Court vide order dated 17.01.2011 passed the following order:-

“Despite the said directions, the case has not been properly investigated by the investigating agency.

“In the facts and circumstances of the present case, it would be just and expedient to direct the Superintendent of Police, Crime Branch, Patiala to get the matter investigated under his supervision. Accordingly, this petition is disposed of with a direction that the case be got investigated under the supervision of Superintendent of Police, Crime Branch, Patiala and thereafter further action be taken in accordance

with law as per the report prepared by the Superintendent of Police, Crime Branch, Patiala.”

[22]. Perusal of aforesaid order passed by trial Court as well as High Court reveal that the investigation conducted by the Police was not upto the satisfaction of the Court even the order passed by High Court further obligated the SP Crime, Patiala to take supervision of the investigation.

[23]. Petitioner alleges that despite the aforesaid intervention by the Courts, no headway was made in the direction of proper investigation, rather a bogus report was submitted that was not in consonance with the spirit of order passed by the High Court. SP Crime, Patiala had erred in relying upon the partial investigation conducted by the police without invoking his mechanism of extracting truth in the prosecution case.

[23]. Learned counsel further submitted that the alleged investigation conducted by the Police gave totally a twisted version that Bhupinder Kumar @ Bobby committed murder of Sonia Sharma and in order to hide his identity he revealed his name to the driver of three Wheeler Roshan Lal and he confessed the guilt. The Police had collected the clothes and also recovered the incriminating materials from Bhupinder Kumar @ Bobby.

[24]. According to petitioner in a sweeping reference the Police has also endorsed a concocted story that Bhupinder Kumar @ Bobby wanted to marry someone else. Sonia Sharma was having relations with aforesaid Bhupinder Kumar @ Bobby and when this

fact came to her knowledge she felt very bad and protested. According to Police that ultimately triggered the controversy that led to murder of Sonia Sharma by Bhupinder Kumar @ Bobby. The story propounded by the Police ultimately remained without collecting incriminating necessary call details as directed by trial Court as well as the High Court. The entire story was sought to be built upon concoction thereby giving stimulus to Bhupinder Kumar @ Bobby to commit crime by alleging non-existent relation between Sonia Sharma and Bhupinder Kumar @ Bobby. Secondly, the report submitted by SP Crime, Patiala did not answer the strong motive of respondents No.2 and 3 to commit murder of Sonia, the past conduct of respondents No.2 and 3 as well their conduct in not attending the last rites of deceased Sonia Sharma. Thirdly the tower location of mobile phone of Rajiv Sharma as well as Bhupinder Kumar @ Bobby to be in Panchkula and after the occurrence the factum of switching off the mobile phones and despite presence in Panchkula did not attend Court proceedings on 25.05.2011. There are certain instances which did not dispel the pointed involvement of respondents No.2 and 3 in the murder of Sonia Sharma. The report submitted by SP Crime, Patiala is nothing but a farce and is an eyewash to circumvent the orders of trial Court as well as of the High Court.

[25]. Learned counsel for the petitioner submits that even in view of material available on record a more than *prima facie* case for showing complicity of respondents No.2 and 3 is made out. The

chain of circumstances if knitted together gives rise strong hypothesis that leads to *prima facie* complicity of respondents No.2 and 3.

[26]. Learned counsel cites 2014(1) RCR (Criminal) 623 Hardeep Singh v. State of Punjab and others and contended that ingredients of offence under Section 319 Cr.P.C., are fully attracted. Questions No.1 and 2 formulated in the aforesaid judgment are fully attracted inasmuch as that the powers under Section 319 Cr.P.C., can be invoked at this stage of commencement of trial and recording of evidence and there is no necessity for waiting for cross-examination of the witnesses. It is only the satisfaction of the Court with reasons that suffice to summon the accused as an additional accused under Section 319 Cr.P.C.

[27]. Thus, prayer under Section 319 Cr.P.C., can be exercised at the stage of completion of Examination-in-Chief and the Court does not need to wait till the evidence of witness is tested on the threshold of cross-examination because it is the satisfaction of the Court that reasons to be recorded which ultimately requires a person to be added as additional accused under Section 319 Cr.P.C.

[28]. The degree of satisfaction for summoning a person as an additional accused was also deliberated in the question No.4 of the said judgment. The requirement is that there must be more than prima-facie case which is just short of satisfaction that if the evidence goes un-rebutted, it would lead to conviction. The Hon'ble Supreme Court in aforesaid Hardeep Singh's case (surpa) recorded

the following observations in paras No.98 and 99:-

“98. Power under Section 319 Cr.P.C., is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so 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.

99. 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.”

[29]. The Apex Court in the concluding part of the judgment answered all the five issues in the following manner:-

“110. We accordingly sum up our conclusions as follows:-

Question Nos.I & III

Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND

Q.III Whether the word “evidence” used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word “evidence” is limited to the evidence recorded during trial?

A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C., and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused. Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1)

Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the charge-sheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No.II

Q.II Whether the word “evidence” used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No.IV

Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319(1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial-therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No.V

Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been

discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh.

The matters be placed before the appropriate Bench for final disposal in accordance with law explained hereinabove.”

[30]. Perusal of the facts involved in the present case if tested on the threshold of observations made in Hardeep Singh's case (supra) gives rise to more than *prima facie* satisfaction i.e. required for framing of charge and if the evidence collected by the Police irrespective of pathetic attitude despite orders by the High Court is appreciated and if the same goes unrebutted at trial would satisfy the chain of circumstantial evidence leading to conviction.

[31]. At this stage, It would be appropriate to consider that respondents No.2 and 3 were specifically named in the FIR. Past history between Sonia Sharma and respondents No.2 was such that respondent No.2 was all out to oust the deceased from the house in which she was residing. The conduct of respondent No.2 was so hostile that even he obtained divorce by playing fraud upon Sonia Sharma and after registration of case and failure to obtain anticipatory bail, he had to compromise and again got the marriage solemnised.

[32]. The unknown mobile call details and call details of respondent No.3 viz-a-viz their *inter se* tower location gives rise to more than prima facie satisfaction for trying the respondents No.2 and 3 as an additional accused. Factum of respondent No.3 serving in BSNL and by getting his influence he succeeded in tampering the call details in respect of first report allegedly given by Investigating Officer. The prima facie complicity further aggravated when the conduct of respondents No.2 and 3 was not found up board in the context of not attending last rites of Sonia Sharma. The conduct of respondent No.2 in not attending Court proceedings despite his service and his presence in Panchkula, switching off the mobile phone after murder of Sonia Sharma are nomenclature of prima facie accusation of respondents No.2 and 3.

[33]. Therefore, by applying the principles laid down in **Hardeep Singh's** case (supra), a case is made out for summoning respondents No.2 and 3 as additional accused to face trial under Section 319 Cr.P.C. Thus, the criminal revision petition is allowed and impugned order dated 27.07.2013 passed by Additional Sessions Judge, SAS Nagar, Mohali is quashed.

[34]. The observations made hereinabove are only confined to decide the controversy under Section 319 Cr.P.C., and nothing expressed hereinabove shall be construed to be a final opinion on merits of the case.

July 03, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE