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

Date of Decision: 03.07.2015

1. CRR No.1031 of 2015 (O&M)

GURSEWAK SINGH

.....Petitioner

Vs

STATE OF PUNJAB AND ANOTHER

.....Respondents

2. CRR No.676 of 2015 (O&M)

SANDEEP SINGH

.....Petitioner

Vs

STATE OF PUNJAB

.....Respondent

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

Present: Mr. S.P.S. Sidhu, Advocate
for the petitioner.

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

Ms. Sushma Chopra, Advocate
for respondents No.2 and
for the petitioner in CRR No.676 of 2015.

- 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]. By this common order CRR No.1031 of 2015 and CRR No.676 of 2015 are being disposed of as common issue is involved in these petitions.

[2]. In CRR No.1031 of 2015 petitioner Gursewak Singh assails order dated 26.02.2015 passed by Additional Sessions Judge, Fazilka vide which an application under Section 319 Cr.P.C. has been dismissed.

[3]. Petitioner Gursewak Singh has alleged that marriage of his sister Jashanpreet Kaur was solemnised on 07.07.2010 with Sandeep Singh. Baltej Singh and Charanjit Kaur are parents of Sandeep Singh. All the three used to harass the sister of petitioner on account of bringing insufficient dowry. Allegations of beating have been alleged. Petitioner used to advise his sister to pass hard time in hope that good sense may prevail over the husband and his parents one day and thereafter she may settle her matrimonial house. However the hope of petitioner remained unfulfilled as husband and his parents failed to amend themselves, rather they kept on harassing and maltreating Jashanpreet Kaur.

[4]. On 03.04.2014, Panchayat was convened and all the three assured that they will not maltreat Jashanpreet Kaur in future. Compromise was reduced into writing which was signed by respectables, husband and father of Jashanpreet Kaur. Despite assurance given by husband and his parents, they did not change their behaviour and kept on inflicting maltreatment, beatings and harassment to Jashanpreet Kaur in the same manner. They started threatening to kill her. Even Jashanpreet Kaur had made a complaint dated 08.03.2014 to the Police, explaining the factual position and requested to take legal action. No action was taken by the Police.

[5]. Allegations have been made that the accused have killed Jashanpreet Kaur in a planned manner by giving electric shock to her after confining her in a bathroom. Even they planned to cremate her body secretly, however petitioner along with other reached at the spot and stopped immediate cremation and got the postmortem conducted. The FIR under Section 304-B/34 IPC came to be registered against Sandeep Singh, Baltej Singh and Charanjit Kaur.

[6]. The occurrence took place on 24.05.2014 when cousin brother of Sandeep Singh called father of complainant at Chandigarh at about 3.30 p.m., on the fact that sister of petitioner has received electric shock while taking bath. Father of petitioner immediately informed petitioner about the incident on telephone. Father of petitioner was admitted in PGI, Chandigarh because of his illness.

[7]. During the course of investigation Bajtej Singh and Charanjit Kaur were declared innocent and challan was submitted only against Sandeep Singh.

[8]. After presentation of challan, charge under Section 304-B IPC and alternate charge under Section 302 IPC was framed against Sandeep Singh. Complainant appeared as PW-2 and deposed vis-a-vis complicity of accused persons according to him. After recording statement of complainant, an application under Section 319 Cr.P.C., was filed before the trial Court through Assistant Public Prosecutor seeking to summon Baltej Singh and Charanjit Kaur as additional accused to face trial on the ground that their complicities are well defined in the FIR as well as in the statements of complainant PW-2.

The said application was dismissed by the trial Court on 26.02.2015 and said decision has been assailed in the present revision petition.

[9]. In second petition CRR No.676 of 2015 petitioner Sandeep Singh has assailed order of chargesheet dated 23.12.2014 issued by the Additional Sessions Judge, Fazilka vide which he has been chargesheeted under Section 304-B IPC and for alternate charge under Section 302 IPC. Allegations have been made that despite having separate land as well as separate residence from the parents, deceased Jashanpreet Kaur was insisting petitioner to sell out the land in order to purchase a big house. On refusal, the parents of deceased came to the house of petitioner on 07.03.2014 and abused him as well as his parents. Injuries were given to mother of petitioner and they were also threatened for dire consequences. Complaint was moved by petitioner to SHO, Police Station Arniwala on 11.03.2014 against father-in-law and sister-in-law (sali) and brother-in-law (sadhu). Panchyat was convened and matter was compromised vide compromise dated 03.04.2014. Petitioner claims the compromise dated 03.04.2014 on the basis of his complaint dated 11.03.2014 moved before the Police against father-in-law, sister-in-law (sali) and brother-in-law (sadhu).

[10]. Petitioner alleged that at the time of death of Jashanpreet Kaur he was not present at home, rather he was present in the fields. The deceased died while taking bath and got electric shock from washing machine in which she was washing her clothes. The death of deceased was accidental and she got superficial burn

marks on the right side of her neck on the upper part and also burn injuries due to electric shock on join of right wrist. Petitioner claims that death of Jashanpreet kaur was accidental and was not murder.

[11]. Allegations of demand have been refuted and separate residence was asserted by petitioner from his parents. Petitioner has relied upon compromise dated 03.04.2014 in which there was no allegation of any demand by petitioner and his family members. The allegations were only with regard to dispute between both families. The Superintendent of Police (D) Fazilka conducted the inquiry and found the parents of petitioner to be innocent. With these facts petitioner has filed the aforesaid petition.

[12]. As per postmortem report deceased Jashanpreet Kaur had superficial burn marks measuring 11 cm x 5 cm on right side of neck on upper part. There were superficial burn marks of visible sizes on back of right wrist joint. The cause of death was deferred till receipt of report of chemical examiner to which viscera was sent.

[13]. Inquiry was conducted by the Police and it was found that Baltej Singh had got separate residence by putting a wall and also having separate mess from his son Sandeep Singh and daughter-in-law Jashanpreet Kaur. Both the families were living separately from each other. Sandeep Singh was having 8 killa of land which came to his share. Therefore, parents do not have any dealing with him.

[14]. On 24.05.2014 Jashanpreet Kaur went to bathroom and after sometime her son started crying and on hearing the cries labourer of Hardev Singh (uncle of Sandeep Singh), Madan Lal

Mistri, daily wager labourer and wife of Hardev Singh and his daughter-in-law came running and reached the house of Sandeep Singh. No voice was coming out from the bathroom. Door of bathroom was broken up by pushing the same. Jashanpreet Kaur was lying unconscious in a naked condition. Wife of Hardev Singh and his daughter-in-law switched off the light and after covering the body of Jashanpreet kaur took her inside the house and gave rubbing on her hand and feet. But she never regained consciousness. They took her to Narula Hospital, Fazilka, but doctor declared her dead. Hardev Singh gave a telephonic call to brother-in-law of Sandeep Singh in respect of electric shock to Jashanpreet Kaur. The investigation conducted by Police did not find any incriminating material against Baltej Singh and Charanjit Kaur and they were accordingly declared innocent.

[15]. A complaint was also filed by Gurcharan Singh father of Baltej Singh and father-in-law of Charanjit Kaur, seeking inquiry and cancellation of the case. The inquiry was conducted by Superintendent of Police (D) Fazilka. During the course of inquiry, it was found that Sandeep Singh was residing separately from his parents along with wife Jashanpreet Kaur and they were not on talking terms with each other. Baltej Singh and Charanjit Kaur never made a demand of dowry. On hearing the cries uncle of Sandeep Singh namely Hardev Singh, Mistri and other labourer from his house attracted to the spot. Baltej Singh was not present in the house and there was no role of parents of Sandeep Singh in the

occurrence. The factum of declaring Baltej Singh and Charanjit Kaur as innocent has been endorsed.

[16]. Trial Court dismissed the application under Section 319 Cr.P.C., on the ground that Baltej Singh and Charanjit Kaur were living separately from the house of Sandeep Singh and Jashanpreet Kaur. In the site plan produced by Police on the file, factum of separate house has been shown in different colour. No new fact has come on record except the bald statement which is a repetition of facts narrated in the FIR.

[17]. In 2014(1) RCR (Crl.) 623, Hardeep Singh v. State of Punjab and others, the Hon'ble Supreme Court summed up the conclusions and scope arising out of Section 319 Cr.P.C. The relevant conclusions summed up in para No.110, is as under:-

“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.”

[18]. Degree of satisfaction required under Section 319 Cr.P.C., is much more higher than the *prima facie* satisfaction at the time of summoning. The test that has to be applied is one which is more than *prima facie* case as required at the time of framing of charge and just short of final conclusion. The scope of extent of powers of Court to summon any person as an accused during course of inquiry or trial in exercise of powers under Section 319 Cr.P.C., has been set at rest by the aforesaid **Hardeep Singh's** case (supra). The legal position has been summarised in para Nos.98 and 99 of the aforesaid judgment. For ready reference para Nos.98 and 99 of the

said judgment are reproduced hereunder:-

“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.”

[19]. The powers of the trial Court under Section 319 Cr.P.C, are to be exercised on the basis of satisfaction that has to be arrived at on the basis of evidence led before it. Degree of satisfaction for

invoking powers under Section 319 Cr.P.C., is the test of *prima facie* case having more degree of satisfaction than the one required for summoning the accused when cognizance is taken and process is issued. Though the test of *prima facie* case remains the same, but degree of satisfaction under Section 319 of Cr.P.C., is much higher than the degree of satisfaction required for summoning at the stage of taking cognizance and issuance of process. It is only the degree of satisfaction that distinguishes the concept of *prima facie* case in both the eventualities i.e. how the judgment of **Hardeep Singh's** case (supra) has been further highlighted in aforesaid context in **2014(5) SCC 568, Babubhai Bhimabhai Bokhiria and anothers v. State of Gujarat and others.** Para No.8 of the said judgment reads as under:-

“8. Section 319 of the Code confers power on the trial Court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the Investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of *prima facie* case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher.”

[20]. In view of aforesaid facts and material on record, this Court is of the considered view that no interference is called for in the impugned order dated 26.02.2015 passed by Additional Sessions

Judge, Fazilka declining to interfere in the application under Section 319 Cr.P.C., and also in CRR No.676 of 2015 as petitioner therein cannot escape presumption under Section 113-B of the Evidence Act at this stage.

[21]. In view of aforesaid both the petitions are hereby dismissed.

[22]. Since the main case has been dismissed no order is required to be passed in criminal miscellaneous No.14221 of 2015.

July 03, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE