

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 1150 of 2015
Date of Decision : 29.05.2015

Sat Pal Singh

.....Petitioner

Versus

Mandeep Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE R.P. NAGRATH

- 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?***

Present: Mr. Ranjit Saini, Advocate
for Mr. Mohinder Singh Gill, Advocate
for the petitioner.

R.P. Nagrath, J.

The petitioner has filed this revision to challenge the order dated 27.01.2015 passed by the trial Court whereby application under Section 319 Cr.P.C. to summon the mother-in-law of the deceased as an additional accused to face trial with her son Mandeep Singh, after some witnesses were examined, was dismissed.

2. The deceased was married with Mandeep Singh on 21.10.2012. The FIR was registered against Mandeep Singh under Section 302 IPC on 30.10.2013.

3. I have heard learned counsel for the petitioner and perused the paper-book.

4. The star witness upon whom the reliance is placed is PW-2 Satwinder Kaur, mediator in the marriage. She belongs to

village Bagrhian of the complainant. On 29.10.2013, PW-2 had come to Shaheed Bhagat Singh Nagar to meet her daughter Harmeet Kaur to whom a male child was born on 25.10.2013. The accused persons also belong to Shaheed Bhagat Singh Nagar, Ludhiana. Satwinder Kaur stated that on 29.10.2013 she went to the house of Sarabjit Kaur deceased to meet her as she got information telephonically from the complainant Satpal Singh, father of the deceased, that a quarrel has taken place between the deceased and Mandeep Singh her husband. Satwinder Kaur saw that bangles of Sarabjit Kaur were lying broken and she was having invisible injuries on upper part of right arm. PW-2 pacified husband of the deceased and came back to the house of her daughter. 10 or 15 minutes thereafter PW-2 again went to the house of accused persons and saw that Mandeep Singh had tied a *chunni* around the neck of Sarabjit Kaur and strangulated her. Mother of Mandeep Singh caught hold of the legs of Sarabjit Kaur and on seeing PW-2 Satwinder Kaur both the accused persons fled from there. PW-2 in further cross-examination conducted on 16.01.2015 stated that she did not disclose to the police that at the time of occurrence she saw Malkiat Kaur at the spot or that Malkiat Kaur had caught hold the legs of the deceased.

5. The other witness examined by the prosecution is PW-1 Satpal Singh, father of the deceased. The witness stated about the deceased being constantly harassed by Mandeep Singh and his mother on account of not bringing sufficient dowry and for meeting

demand of more dowry articles.

6. Learned counsel for the petitioner submitted that in the FIR, the story of the girl being harassed on account of bringing less dowry was not mentioned but with regard to aforesaid story of demand of dowry and harassment, the supplementary statement was made to the police on 13.11.2013 under Section 161 Cr.P.C. which is Annexure P-3. In the said statement it was further mentioned that Sarabjit Kaur (deceased) told the wife of the complainant that her son-in-law was having illicit relation with Riya wife of Jassi, who was residing on rent in their house. That is why Mandeep Singh was disliking her daughter Sarabjit Kaur. The petitioner has not placed on record the FIR or copy of challan report in support of the instant petition obviously because the story originally propounded, related to the allegation of Mandeep Singh having illicit relation with some other girl or the harassment on account of bringing insufficient dowry as per supplementary statement.

7. Learned Sessions Judge has observed in the impugned order that in the FIR the complainant has not levelled any allegation against Malkiat Kaur, the mother of Mandeep Singh. It was further observed that while appearing in the witness-box, PW-1 and PW-2 both have made improvements in the previous version. The other observations made by learned Sessions Judge while declining the prayer under Section 319 Cr.P.C. are as under:-

“.....There must be substantial evidence against a

*person in order to summon him/her for trial, although he/she is not named in the charge-sheet. It is also settled law that power under Section 319 Cr.P.C. is discretionary power and it should be exercised with caution. In this context, reference be made to **Brindaban Das and another vs. State of West Bengal, 2009 (3) SCC 329**. In the absence of sufficient evidence to show conspiracy between Mandeep Singh and her mother Malkiat Kaur and the fact that during investigation, no specific allegations are levelled regarding direct involvement of Malkiat Kaur in the murder of Sarabjit Kaur, this Court is of the view that it would not be proper to invoke the provisions of Section 319 Cr.P.C. in the case in hand.”*

8. In **Harbhajan Singh and another vs. State of Punjab and another, 2009 (13) SCC 608**, the Hon'ble Supreme Court held that if a judicious discretion exercised by the Court had led it to pass an order under Section 319 Cr.P.C., the High Court exercising a revisional jurisdiction would interfere therewith, *inter alia*, in a case where legal principles laid down had not been satisfied.

9. Indisputably, before an additional accused can be summoned for standing trial, the nature of the evidence should be such which would make out grounds for exercise of extraordinary power. The material brought before the Court must also be such which would satisfy the Court that it is one of those cases where its

jurisdiction should be exercised sparingly. When an attempt is made to make out an absolutely different case before the trial Court on the basis of charge-sheet, I am of the considered view that simply on the said improved story, respondent no. 2 could not have been summoned as an additional accused to face trial with Mandeep Singh already facing trial in the case. I find that discretion exercised by the learned Sessions Judge is based on the material which cannot be possibly disturbed.

10. No merit. Dismissed.

11. The prosecution or complainant by appropriate application may apply to the trial Court for framing of alternative/additional charge like Sections 304-B/498-A IPC, and on such filing within a reasonable time the trial Court would decide the same in accordance with law.

May 29, 2015

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**(R.P. NAGRATH)
JUDGE**