

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

CRR No.1250 of 2015 (O&M)

Date of decision:07.05.2015

Santosh

... Petitioner

Vs.

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

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

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TEJINDER SINGH DHINDSA, J.

The instant revision petition is directed against the order dated 20.03.2015 passed by the learned Sessions Judge, Bhiwani in terms of which an application moved by the prosecution under Section 319 Cr.P.C. for summoning Kuldeep S/o Shankar Lal and Suman W/o Biniya (private respondents No.2 & 3 herein) to face trial as additional accused in case FIR No.436 dated 14.07.2014, registered at Police Station City Bhiwani, under Sections 306/34 IPC has been dismissed.

Brief facts as emanating from the pleadings on record are that FIR No.436 dated 14.07.2014 was registered at Police Station City Bhiwani, under Sections 306/34 IPC on the statement of Smt. Santosh. Complainant version was that she was working at Jiwan Nursing Home, Bhiwani and her husband had expired 11-12 years back. She had one son, namely, Parveen alias Sonu, who worked as a labourer. Parveen's wife, namely, Nitu was previously married with Bishan Singh and had three children from such

wedlock. Bishan Singh is stated to have committed suicide one year before. Parveen that is son of the complainant is stated to have met Nitu after the death of her husband i.e. Bishan Singh and thereafter love marriage between them was solemnized. Accordingly, Nitu along with her three children from the previous wedlock came to reside with son of the complainant i.e. Parveen in their house at Bhiwani. Complainant further stated that Anil S/o Balraj used to frequent their house in Bhiwani. Further allegations were that Nitu was not of a good character and she developed illicit relations with Anil. Such situation had come in the knowledge of son of the complainant. Complainant stated that one month prior to recording of the statement, Nitu had left with the three children and went to Anil's place at Rohtak and thereafter proceeded to village Lehriya where her sister, namely, Suman resided. As per complainant, on 13.07.2014 at about 8 PM when she returned back from duty, she noticed the door of the house being closed but not bolted from inside. Upon opening the door, she saw that her son, Parveen alias Sonu had hanged himself with a scarf around his neck and with a hook on the batten. Parveen was removed to the hospital with the help of persons from the neighborhood and whereupon he was declared dead.

Counsel appearing for the petitioner has submitted that the investigating authorities have only challaned Nitu i.e. wife of deceased Parveen and Anil and have knowingly and deliberately treated Kuldeep, brother of Nitu and Suman, sister of Nitu as innocent. Counsel would vehemently contend that in the light of deposition of the complainant, Smt. Santosh, PW1 before the trial Court and in the light of two suicide notes dated 17.06.2014 and 26.06.2014 placed on record at Annexures P-3 and

P-4, the private respondents herein are liable to be summoned as additional accused to face trial in the case.

Counsel has been heard at length.

Section 319 Cr.P.C. reads as under:

“319 Cr.P.C. -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.”

The extent of power with the Court to summon persons other than the accused under Section 319 Cr.P.C. to stand trial in a pending case came up for consideration before the Hon'ble Supreme Court in **Lal Suraj @ Suraj Singh and another Vs. State of Jharkhand, 2009 (1) RCR**

(Criminal) 504 and it was held as follows:

“The principle of strong suspicion may be a criterion at the stage of framing of charge as all the materials brought during the investigation were required to be taken into consideration, but, for the purpose of summoning a person, who did not figure as accused, a different legal principle is required to be applied. A Court framing a charge would have before it all the materials on record which were required to be proved by the prosecution. In a case where however, the Court exercises its jurisdiction under Section 319 of the Code, the power has to be exercised on the basis of the fresh evidence brought before the Court. There lies a fine but clear distinction.”

In a recent judgment rendered by the Apex Court titled as **Hardeep Singh Vs. State of Punjab & others, 2014 (1) RCR (Criminal) 623**, it was observed that although only prima facie case is to be established from the evidence led before the Court while exercising power under Section 319 Cr.P.C. to summon additional accused but it would require much stronger evidence than mere probability of such persons complicity in the offence. The test that has to be applied is one which is more than prima facie case as exercised at the stage of framing of charge but short of satisfaction to an extent that the evidence if gone un rebutted would lead to conviction. In the absence of such satisfaction, the Court would refrain from exercising power under Section 319 Cr.P.C.

Adverting back to the present case, a conjoint reading of the statement of the complainant, Smt. Santosh as also her testimony before the trial Court as PW1 (Annexure P-5) would reveal that the allegations are directly targeted against Nitu i.e. the daughter-in-law, who is alleged to be in an illicit relationship with one Anil and her son, Parveen (since deceased) on coming to know of such situation having committed suicide. Insofar as

private respondents herein are concerned i.e. Kuldeep and Suman, there is only a passing reference as regards certain threats having been issued. Even in the two suicide notes left behind by deceased Parveen and placed on record at Annexures P-3 and P-4 dated 17.06.2014 and 26.06.2014 respectively and presuming the contents thereof to be correct, the allegation pertain to illicit relations between wife of the deceased i.e. Nitu and cousin brother of deceased Parveen, namely, Anil.

Concededly, wife of deceased Parveen as also Anil with whom she had allegedly developed illicit relationship have already been nominated as accused and are facing trial.

In the totality of circumstances, this Court is of the considered view that the learned Sessions Judge, Bhiwani while passing the impugned order dated 20.03.2015 declining the application under Section 319 Cr.P.C. to summon the private respondents herein as additional accused has rightly applied the test laid down in **Hardeep Singh's case (supra)**.

No infirmity in the impugned order is found and accordingly, the instant revision is dismissed.

Dismissed.

May 07, 2015

harjeet

(TEJINDER SINGH DHINDSA)

JUDGE

Note: Whether referred to the Reporter?

Yes