

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

CRR No. 1553 of 2015 (O&M)
Date of decision:- May 05, 2015

Surjit Singh

.....Petitioner..

Vs.

State of Punjab and others

....Respondents..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. R.S. Bajaj, Advocate
for the petitioner.

JASPAL SINGH, J.

Challenge in this revision petition is to the order dated January 30, 2015 (Annexure P-1) passed by the Id. Sessions Judge, Hoshiarpur whereby application moved by the prosecution under Section 319 of Cr.P.C. for summoning respondents No. 2 to 13 as additional accused to face trial along with their co-accused in FIR No. 10, dated March 18, 2013, under Section 306 IPC, registered at Police Station Garhdiwala, Hoshiarpur, has been dismissed.

2. The background of the instant case is that petitioner is a resident of village Bhanowal, Police Station Gardhiwala, Tehsil Dasuya, District Hoshiarpur. Respondents No. 2 to 13 are also residents of same locality. Respondent No.3 Manju had been working as servant in the house of petitioner. During her stay,

whenever respondent No.3- Manju got mobile phone of the wife of petitioner namely Mandeep Kaur, she used to make call to accused Gurwinder Singh, with whom, she developed illicit relations. Said Gurwinder Singh taking undue advantage of said mobile phone started making calls on the mobile phone of Mandeep Kaur. In this regard, a complaint was also lodged to Panchayat on February 23, 2012 but no action was taken by the Panchayat. Rather, Gurwinder Singh started extending threats to petitioner on his mobile number. As a result whereof, petitioner again lodged a fresh complaint to the village Panchayat, which was forwarded by it to the Police Station Gardhiwala but no action was taken against Gurwinder Singh. Meanwhile, respondent No.3-Manju started passing information to accused with regard to the absence of petitioner from the house and presence of only Manju and Mandeep Kaur, wife of petitioner. Taking advantage of the absence of petitioner, respondents No. 2 to 13 started harassing the wife of petitioner besides giving threatening calls to him. In this connection, he lodged a complaint to SHO, Gardhiwala on March 27, 2012 but no action was taken on the said complaint. In the mid of month of July 2012, when petitioner was away from his house, respondent-Manju called other accused persons in the house of petitioner. Firstly, they gave beatings to the wife of petitioner and caused injuries to her and then extended threats to her life. Not only this, accused persons shared bed with the wife of petitioner and prepared movie on their mobile phones. When wife of petitioner started crying to save herself, aforesaid persons

extorted money from her and also took her gold ornaments. In this regard also, complaint was lodged by petitioner to SSP, Hoshiarpur but with no result. On account of the said incident, wife of petitioner underwent depression, which ultimately led her demise on August 01, 2012. Regarding this incident also, petitioner filed a complaint to SHO, Gardhiwala but due to influence of the accused persons, local police manipulated the entire matter and wrongly got recorded the statement of petitioner as also of his father-in-law under threat and coercion just to save accused persons. The matter was also reported to the State Human Rights Commission. Ultimately, instant FIR was registered on March 18, 2013 and investigation was put into motion. Even during the investigation of the case, free and fair investigation was not conducted and challan was only presented against Gurdial Singh and Pardeep Kumar while other accused i.e. respondents No. 2 to 13 were given a clean chit by the police.

3. At this juncture, learned counsel for petitioner has contended that there being a prima facie evidence showing the involvement of respondents No. 2 to 13, an application was moved under Section 319 Cr.P.C. for summoning respondents No. 2 to 13 as additional accused to stand trial along with their co-accused i.e. Gurdial Singh and Pardeep Kumar but that application was dismissed by Id. trial court without application of mind as well as mis-appreciation of evidence. In fact, deceased was subjected to rape by respondents No. 2 to 13, who also prepared video and got clicked photographs. But despite the fact that there is cogent and convincing

evidence available on file, Id. trial court dismissed the application, which necessitated the filing of instant revision petition. The Id. trial court while dismissing the application moved under Section 319 Cr.P.C. has simply observed that inquiry has already been conducted by DSP, Tanda Umar and further that call details of mobile phones of Mandeep Kaur and Gurwinder Singh were obtained but the same do not connect respondents No. 2 to 13 with the alleged crime. Since, there is prima facie evidence of the involvement of respondents No. 2 to 13, which ultimately resulted into the death of Mandeep Kaur, impugned order is liable to be set aside and application deserves to be accepted.

4. This Court has given an anxious thought to the aforesaid submission made by learned counsel for the petitioner and has perused the records available.

5. By now, it is pretty settled that while dealing with an application under Section 319 Cr.P.C, court should not summon a person as an additional accused and pass an order mechanically merely on the ground that some evidence had come on record showing complicity of a person in the crime and further that power envisaged under Section 319 Cr.P.C. is to be used sparingly only if there is convincing evidence against the person(s) sought to be summoned as an additional accused. To fortify this view, we can have reference of the pronouncement of Hon'ble Apex Court captioned as ***Krishnappa vs. State of Karnataka; 2004 (4) RCR 679*** as well as that of our own High Court titled as ***Manoj Kumar vs.***

Prabhu Ram; 2003 (4) RCR 887.

6. Recently in case ***Hardeep Singh vs. State of Punjab and others; 2014 (3) SCC 92***; power envisaged under Section 319 Cr.P.C. was discussed at length. The relevant paragraphs of the above-referred judgment reads as under:

“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 un rebutted, 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.”

7. A perusal of the afore-said paragraphs discloses that power under Section 319 Cr.P.C. is to be exercised sparingly being discretionary and extraordinary and that too, in those cases where circumstances of the case so warrant. It has further been laid down that no doubt, only a *prima facie* case is to be established by the prosecution by way of evidence led before the court and the same is not required to be tested on the anvil of cross-examination, yet, it has also been observed that it requires much stronger evidence than mere probability of the complicity of a person to be summoned as an additional accused. The test that has to be applied is one which is more *prima facie* case as exercised at the time of framing of charge but short of satisfaction to an extent that the evidence, if left un rebutted would lead to conviction. Therefore, mere statement of Surjit Singh-PW-3 which can be termed to be an improved version is not sufficient to summon petitioner as an additional accused.

8. Adverting to the facts of the case in hand, it would not be out of place to mention that there is no evidence what to talk of any *prima facie* evidence showing the complicity of any of respondents No. 2 to 13 in the commission of death of Mandeep Kaur, wife of petitioner. The case of petitioner is that in his absence in connivance with Manju, respondents No. 2 to 13 subjected his wife to rape, prepared movie when she was sexually assaulted, extorted money by blackmailing her and further that she was given severe beatings by respondents No. 2 to 13. But to the utter surprise, neither any movie nor any photographs has seen the light of the day. The alleged

witness has not so far been examined. There is no medical evidence brought on record by the petitioner that his wife was subjected to rape by any of respondents No. 2 to 13. Rather, it is the case of petitioner himself that his wife was under depression and ultimately, breathed her last. Even, during the course of arguments, learned counsel for petitioner could not point out the existence of any movie alleged to have been prepared by any of respondents, when his wife was allegedly subjected to rape or any other circumstances, showing the said fact.

9. No doubt, Court has got vast power under Section 319 Cr.P.C. to summon any person as an additional accused but there must be some evidence to prima facie establish the complicity of the person in this regard. Since, no MMS, videography, photographs and medical evidence has been brought on record by petitioner, this Court is of the considered view that there is no sufficient evidence to summon any of the respondents as an additional accused. Application moved in this regard by the prosecution has rightly been dismissed by the Id. trial court. Impugned order does not call for any interference by this Court. Accordingly, instant petition being devoid of merits also stands dismissed.

(JASPAL SINGH)
JUDGE

May 05, 2015
sonika

To be referred to reporters.