

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Revision No. 1726 of 2014 (O&M)

Date of decision : March 23, 2015

Rachna Devi

.....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Prateek Rathee, Advocate
for the petitioner.

Mr. S.S. Chaudhary, DAG, Punjab

Mr. Onkar Singh, Advocate
for respondent No. 2.

LISA GILL, J.

This revision petition has been filed challenging order dated 01.03.2014 whereby the revisional Court has allowed respondent No. 2 - Kamaljit Kaur's revision petition and set aside order dated 26.10.2013 passed by the trial Court whereby she had been summoned to face trial under Sections 279 and 304-A IPC. The petitioner/complainant being aggrieved by consequent dismissal of her application under Section 319 Cr.P.C., has preferred this revision petition.

FIR No. 26 dated 27.02.2013 under Sections 279, 304A IPC was registered on the complaint of petitioner Rachna Devi to the effect that her younger son Gulshan Kumar, a student of Class-2 in Government Elementary School Purana Bhangala went to school on

27.02.2013. At about 11.00 a.m., some students came and informed her that Gulshan Kumar has met with an accident with tractor trolley in the school. On reaching school, complainant found the head teacher missing. She was informed that the owner of the tractor trolley, on arranging the vehicle, has taken her injured son to Civil Hospital. Her son was referred to DMC, Ludhiana from Civil Hospital, Mukerian keeping in view his serious condition. On the way to DMC, Ludhiana her son died at Bhogpur. She subsequently came to know that tractor trolley was being driving by Satwinder Singh son of Chanan Singh. It is alleged that the accident took place on account of negligence of Satwinder Singh driver of the tractor trolley as well as negligence of the Head teacher and staff members of the school.

On completion of investigation, challan/report under Section 173 Cr.P.C. was presented against Satwinder Singh, the driver of the tractor trolley. The charges were framed and on the accused pleading innocence, trial commenced.

Petitioner-complainant Rachna Devi appeared as PW1 and narrated her version before the trial Court (Annexure R-3). Examination-in-chief of Rachna Devi was conducted and the cross examination was deferred.

An application under Section 319 Cr.P.C. dated 05.10.2013 (Annexure R-4) was moved by the prosecution for summoning respondent No. 2 - Kamaljit Kaur, Head Mistress and other staff namely Class Incharge Kuldeep Kaur, Aman Kaur, Pawan Kumar, Rupinder Kaur, Alka Devi, Amita Devi, Surinder Kumar, Rahul Kumar, Rishi Kumar and Nirmala Devi, all working as teachers at

Elementary School Purana Bhangla, Tehsil Mukerian, District Hoshiarpur.

The trial Court vide order dated 26.10.2013 while partly allowing this application summoned respondent No. 2 - Kamaljit Kaur, Head Mistress to face trial under Sections 279 and 304 A IPC. It is observed therein that nobody else was summoned as the complainant has not named any teacher Incharge of the deceased Gulshan Kumar.

Respondent No. 2 - Kamaljit Kaur preferred revision petition against this order, which has been allowed vide impugned order dated 01.03.2014.

The petitioner-complainant Rachna Devi being aggrieved of the same has preferred this revision petition and prays for setting aside order dated 01.03.2014.

Learned counsel for the petitioner on 15.07.2014 stated that application under Section 319 Cr.P.C. was not pressed as far as summoning of the teaching staff of the elementary school is concerned and the relief was confined only for summoning respondent No. 2 - Kamaljit Kaur, Head Mistress of the school.

Notice of motion was issued to this limited extent.

Learned counsel for the petitioner vehemently submits that respondent No. 2 being Head Mistress of the school was under a solemn duty to take requisite steps and precautions to ensure the safety and life of the students. There is sufficient material on record to show the commission of offence by respondent No. 2 punishable under Sections 279 and 304A IPC. It is contended that statement of

the complainant in her examination-in-chief is sufficient evidence at this stage for summoning respondent No. 2.

Reliance is placed on the judgment of Hon'ble Supreme Court in **Hardeep Singh versus State of Punjab and others** 2014 (1) R.C.R. (Criminal) 623 to submit that once examination-in-chief is conducted it becomes part of the record. It is 'material' on the basis whereof the Court can come to a prima facie opinion as to complicity of some other person, who may be scribed with the offence. The Court does not need to wait till the evidence is tested on cross examination for exercising the power under Section 319 Cr.P.C.

It is strenuously urged that there is a clear failure on the part of respondent No. 2 to have taken proper and reasonable care, which is expected from a prudent person in the present circumstances. Sufficient precautions have not been taken by respondent No. 2 thereby making her liable for the offences punishable under Sections 279 and 304 A IPC.

While referring to judgment of the Hon'ble Supreme Court in **Rathnashalvan versus State of Karnataka** (2007) 3 Supreme Court Cases 474, he submits that criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen, was the imperative duty of the accused persons to have adopted. Thus, in the present case, application under Section 319 Cr.P.C. has been wrongly dismissed qua respondent No. 2.

Per contra, learned counsel for respondent No. 2 submits that on investigation conducted by the police, respondent No. 2 had been found innocent and it was revealed that she is not liable to be proceeded against for the offences punishable under Sections 279 and 304A IPC. The inquiry was conducted by the Additional Superintendent of Police in this case and as per his report dated 20.05.2013 (Annexure R-2) it is observed that no negligence on the part of the staff of the school has emerged. As per the said report, there is one Anganwari centre as well as the Government Middle School situated within the same precincts. There are two gates and boundary walls. One is the main gate where the occurrence took place, another is a smaller gate. There is no boundary wall on the East side of the primary school where the deceased Gulshan Kumar was studying. There is an open passage for exiting the school. It transpired that the unfortunate incident took place during recess in school from 12.30 to 1.00 noon. Satwinder Singh had brought food items to Anganwari centre in a tractor trolley. The deceased child Gulshan Kumar hung on the side of the trolley and when it was passing through the gate he suffered severe injuries as his head hit the pillar of the gate. Teacher Pawan Kumar, Sarabjit Singh, Driver of tractor trolley Satwinder Singh, brought the child Gulshan Kumar in a car to the Civil Hospital, Mukerian. Satwinder Singh was found guilty of the offence punishable under Sections 279 and 304A IPC.

It is urged that there is nothing on record to show that due care and caution has not been exercised by the respondent. Before the trial Court, the petitioner has simply reiterated the statement she

made before the police. There is no evidence, which has come on record to indicate the culpability of respondent No. 2. The allegations made by the petitioner have been duly investigated and found to be incorrect. Mere mentioning of the name of Head Mistress without specifying any other act, does not make out a case for summoning her. Furthermore, the petitioner has given up her claim qua any other member of the staff, therefore, no case is made out against respondent No. 2. Criminal liability does not arise qua respondent No. 2.

I have heard learned counsel for the parties and gone through the file. The statement of the petitioner before the trial Court (Annexure R-3) reads as under:-

“PW1

Rachna Devi aged 32 years wife of Amarjit Singh village Purana Bhangala

1. Stated that I have 3 children, two are boys, one is girl. The name of my youngest son was Gulshan Kumar who was studying in Government Elementary School Purana Bhangala and as a daily routine manner he went to school. That when I was present in my house, the two boys came to my house who told that Gulshan Kumar had met with an accident and it was 11-00 AM. Then I alongwith my mother Krishna Devi went to school and we saw that the staff of the school was present. When the accident of my child took place then head teacher Kamaljit Kaur wife of Prem Singh resident of Purana Bhangala, Kuldeep Kaur, Amar Kaur, Pawan Kumar, Rupinder Kaur, Alka Devi, Mamta Devi, Surinder Kumar, Rahul Kumar, Rishi Kumar, Nirmala Devi

and tractor driver Satwinder Singh son of Chanan Singh resident of village Naharpur and his tractor PB-18G-2935, it was due to their negligence and the aforesaid all the persons are responsible for the death of my son.

2. *Then I while sitting on the motorcycle of a boy, Gunge of my village came to Civil Hospital, Mukerian, where the Doctor Sahib referred the child to DMC due to his serious condition then told that my son has died in the school only.*

3. *Then I got recorded my statement Ex. PA with the police on which I identify my signature. Today, I have seemed accused Satwinder Singh who is present in the court and the remaining are not present. At this stage, learned APP wants to moved an application under Section 319 Cr.P.C.”*

The allegations are identical to the ones raised at the time of registration of the FIR. An inquiry was duly conducted and no case for proceeding against respondent No. 2 was made out. There is no quarrel with the proposition of law as delineated by the Hon'ble Superme Court in **Hardeep Singh's** case (supra) that power 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 it is tested on the anvil of cross examination. However, it has also been held in this case that the material on record should disclose the complicity of the person in the commission of offence. While referring to numerous earlier judgments, it has been held that the Court must satisfy itself about the existence of an exceptional circumstance and arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, *may* lead to the conviction of the

person/persons sought to be added as an accused, only then should the power under Section 319 Cr.P.C. exercised. Though the test of 'prima facie case' is the same as at the time of taking cognizance but the degree of satisfaction required is much stricter. It is observed as under:-

“ 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 the instant case, the record reflects that apart from the statement of the petitioner that unfortunate death of her son occurred due to negligence of the Head mistress, there is nothing on record, which points to the culpability of respondent No. 2. There is no indication as to the steps which were imperative to have been taken by her in this regard and which were ignored by her or not taken care of. She is alleged to be guilty of having caused the death of Gulshan Kumar on account of her negligence.

The Hon'ble Supreme Court in **Guriya @ Tabassum Tauquir and others versus State of Bihar and another** 2007 (2)

CAR (SC) 957 has held that an extraordinary power under Section 319 Cr.P.C. should be used sparingly and only if compelling reasons

exist for taking action against a person against whom proceedings had not been initiated earlier. Mere mentioning of the name of the accused cannot form the basis of prosecution. There is no allegation of respondent No. 2 not having taken specific steps, which were necessary for safeguarding the life and liberty of the students.

In this situation, there is no perversity in the impugned order. Doubtlessly, the driver of the tractor trolley is being proceeded against. In the absence of positive evidence of respondent No. 2 not having taken necessary reasonable proper care in the facts and circumstances of the case, no case is made out for summoning under Section 319 Cr.P.C. In ***Rathnashalvan's*** case (supra) it has been held that criminality lies in running the risk of doing such an act or recklessness or indifference as to the consequences. There has to be a failure to carry out an action which was the imperative duty of the accused. A clear distinction has been made out between culpable negligence or rashness. The action or inaction on the part of respondent No. 2, which may lend a colour of criminality, is not apparent from the material on record, which could warrant her being summoned under Section 319 Cr.P.C.

Keeping in view the above, this petition is dismissed. However, it is made clear that there shall be no bar to the summoning of respondent No. 2 at any later stage in case positive evidence is brought on record to indicate culpable negligence or rashness on her part.

March 23, 2015
rts

(LISA GILL)
JUDGE