

CRR No. 1874 of 2015 1

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

**CRR No. 1874 of 2015
Date of decision : 21.05.2015**

Deepika

..... Petitioner

Versus

State of Haryana and another

..... Respondent

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Munish Mittal, Advocate
for the petitioners.

- 1. Whether Reporters of local papers may be allowed to see the judgement? Yes**
- 2. To be referred to the Reporters or not? Yes**
- 3. Whether the judgement should be reported in the Digest?Yes**

DARSHAN SINGH,J

1. The present revision petition has been filed against the order dated 11.02.2015 passed by the learned Additional Sessions Judge, Karnal, vide which the application moved by the petitioner and the State of Haryana through the learned Public Prosecutor under Section 319 Code of Criminal Procedure, 1973 (for short Cr.P.C) for summoning Bhagirath Meena as an additional accused has been dismissed.

2. As per the prosecution allegations, the mother of the petitioner died on 02.07.2002. Thereafter, his father Ravinder Kumar solemnized the second marriage with Aarti @ Baby daughter of Parkash Chand. Aarti @ Baby, her father Parkash Chand and her mother Shakuntla Devi started demanding money from her father and they used to give beatings to her father. Thereafter, accused Aarti @ Baby without getting any divorce from her father married with Raj Kumar resident of Bara Pugthala, District Sonapat. She remained with him for a period of one year and got divorce in Mahila Mandal Panipat from said Raj Kumar. Thereafter, said Aarti @ Baby and her parents started threatening and torturing father of the petitioner to keep Aarti @ Baby as his wife. They also raised the demand of money. As a result of which Ravinder Kumar, the father of petitioner committed suicide by consuming some poisonous substance. It was alleged besides accused Aarti @ Baby, Shakuntla and Parkash Chand, Bhagirath Meena had also abetted deceased Ravinder Kumar in the commission of suicide. But, the police has not challaned him in spite of several applications moved to the police. Hence the application under Section 319 Cr.P.C

3. The learned trial Court on appreciating the evidence and the contentions raised by the learned counsel

for the parties dismissed the said application vide impugned order dated 11.02.2015.

4. I have heard Mr. Munish Mittal, Advocate, learned counsel for the petitioner and have carefully gone through the paper book.

5. Learned counsel for the petitioner contended that there are specific allegations against Bhagirath Meena in the statement of complainant Deepika, which clearly shows that Bhagirath Meena has also abetted the suicide by Ravinder Kumar. But, the police has not challaned him as a result of collusion. On the basis of evidence produced during the trial, he should be summoned as an additional accused under Section 319 Cr.P.C.

6. I have duly considered the aforesaid contentions.

7. The legal position with respect to the scope of the powers to be exercised under Section 319 Cr.P.C to summon a person as an additional accused has been settled by the Constitutional Bench of the Hon'ble Apex Court in case **Hardeep Singh Vs. State of Punjab and others,** **2014(1) R.C.R (Criminal) 623.** In this judgment, the Hon'ble Apex Court has categorically laid down as under:-

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 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."

8. In the aforesaid judgment, the Hon'ble Apex Court has laid down that the test which has to be applied is one which is more than prima facie as exercised at the time of framing charges. But, short of satisfaction to an extent that evidence if goes un rebutted would lead to conviction and in the absence of such satisfaction the Court should refrain from exercising the power under Section 319 Cr.P.C. So, the evidence for summoning a person as an additional accused should satisfy the test which should be more than prima facie and if that test is not complied with the Court is not

required to exercise the powers under Section 319 Cr.P.C.

9. In the instant case, in the statement of the complainant Deepika, when she stepped into the witness box as PW-5, it has been mentioned that Aarti @ Baby along with her parents Parkash Chand and Shakuntla used to come in a gray colour car of one senior officer of Refinery, whose name was not knowing earlier, but later on she came to know his name as Bhagirath Meena resident of Rajasthan. She has further mentioned that all the three accused (already facing trial) present in the Court as well as Bhagirath Meena use to threaten her father to kill and they used to come after interval of 1-1 ½ months. Thus, the only allegation against Bhagirath Meena are that the three accused who are already facing the trial used to visit the house of the victim in a gray colour car of Bhagirath Meena and Bhagirath Meena used to threatened the victim. The statement of the complainant is very vague. It is not specifically mentioned as to when Bhagirath Meena threatened her father or visit their house, which was necessary even to prima-facie make out the ingredients of the offence of abetment to commit suicide in order to see the proximity of the acts attributed to said Bhagirath Meena and the suicide by Ravinder Kumar. Mere, these allegations that the main accused have been visiting the house of victim

Ravinder Kumar in the car belonging to Bhagirath Meena and he has been threatening the deceased will not satisfy the test of more than prima-facie case for the satisfaction of the Court to summon said Bhagirath Meena to face the trial for the offence of abetment to commit suicide.

10. Thus, keeping in view of my aforesaid discussion, I do not find any legal infirmity in the impugned order passed by the learned trial Court. Consequently, the present petition is without any merits and the same is hereby dismissed.

21.05.2015

s.khan

**(DARSHAN SINGH)
JUDGE**