

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Crl. Revn No. 231 of 2015 (O&M)
Date of decision : 10.02.2015

Kanak SinghPetitioner

versus

State of Haryana & anr. ...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. K.S. Dhaliwal, Advocate
for the petitioner.

RITU BAHRI, J.

Challenge is to the order dated 18.12.2014 passed by the learned Addl. Sessions Judge Karnala, whereby an application under Section 319 Cr.P.C to summon respondent No. 2-Vikram was dismissed

On a statement made by the petitioner/complainant to the police, F.I.R No. 309 dated 04.06.2014 under Sections 498-A/304-B/34 IPC was registered (Ex P9) with the allegations that Bijender, his mother Santro Devi and his brother Vikram used to harass his daughter Reena on account of demand of dowry. The said fact was disclosed by Reena to them. They were raising demand of money for raising construction of house

immediately prior to death of Reena. During investigation, Vikram was kept in column No. 2. After the deposition of the complainant, an application was filed. The trial Court took into account the ration card of Vikram, his wife and daughter and copy of ration card of Mani Ram, Santro, Bijender and Rekha. The separate ration card of two units shows that Vikram had been residing separately from his parents since long. The house number in the ration card of Vikram has been shown as 924 whereas the house number of Mani Ram, Santro etc. has been shown as 175, which shows separate residences of Vikram and his father. Accused Bijender has been shown to be residing with his parents. The ration card of Vikram has been shown to be of the year 2005.

Apart from the allegations in the F.I.R and the deposition of the complainant, there is no direct evidence against Vikram that he had harassed Reena in her matrimonial house. For exercising discretionary jurisdiction in terms of Section 319 Cr.P.C, Hon'ble the Supreme Court has laid down certain guidelines in the case of Mohd. Shafi vs. Mohd Rafia, 2007 14 SCC 544, Sarabjit Singh and anr. vs. State of Punjab and anr and recently in Hardeep Singh vs. State of Punjab and others 2014(3) SCC 92 and it has been held that it is not a prima facie case which is to be examined

at the time of summoning the accused under Section 319 Cr.P.C, it requires much stronger evidence than mere probability of his complicity. The evidence has to be more than prima facie evidence, which is required at the time of framing of charge.

In para 110 of Hardeep Singh's case (supra), Hon'ble the Supreme Court has observed as under:-

“110. We accordingly sum up our conclusions as follows:

Question Nos.1 & III

Q.1 What is the stage at which power under Section 319 Cr.P.C. Can be exercised?

AND

Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. Has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In **Dharam Pal's** case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused. Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are

species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the chargesheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No. IV

Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.”

As per the observation of Hon'ble the Supreme

Court, the application of the provisions of Section 319 Cr.P.C., at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 Cr.P.C. can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to hereinabove, adding a person as an accused, whose name has been mentioned in Column 2 of the charge sheet or any other person who might be an accomplice.

Section 319(1) Cr.P.C. empowers the court to proceed against other persons who appear to be guilty of offence, though not an accused before the court. The word “appear” means “clear to the comprehension”, or a phrase near to, if not synonymous with “proved”. It imparts a lesser degree of probability than proof. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

In the present case, Vikram was having separate ration card and was residing in his house No. 924 whereas the house number of Mani Ram, Santro etc. are residing at H. No. 175 where Bijender was residing with his wife. He was residing since 2005. Hence, the allegations that he could

harass Reena to the extent which could lead to her death is not made out against him.

Order dated 18.12.2014 passed by the learned Addl. Sessions Judge Karnala does not require any interference by this Court.,

The petition stands dismissed.

(RITU BAHRI)
JUDGE

10.02.2015
G Arora