

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3031-2014

Date of decision: 24.03.2015

Vikramjit Singh

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Saurav Khurana, Advocate
for the petitioner.

Ms. Anmol Grewal, AAG, Punjab.

Mr. A.P.S. Deol, Senior Advocate with
Ms. Sagarika, Advocate and
Mr. Rajesh Punj, Advocate
for respondents No.2 & 3.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK J.(ORAL):

Present Criminal Revision Petition is directed against the order dated 02.08.2014 passed by learned Addl. Sessions Judge, Ludhiana whereby application under Section 319 of Code of Criminal Procedure ('Cr.P.C.' for short), moved by the prosecution for summoning Sh. Surinder Singh and his

wife Smt. Prabhjot Kaur as additional accused, was dismissed.

Notice of motion was issued and pursuant thereto reply by way of affidavit along with Annexures R-1 to R-12 was filed on behalf of respondents No.2 and 3.

Learned counsel for the petitioner submits that when similar application moved by the prosecution under Section 319 Cr.P.C. was earlier dismissed by the learned Addl. Sessions Judge vide order dated 18.03.2013, petitioner approached this Court by way of CRR-2227-2013 (Vikramjit Singh Vs. State of Punjab and others) and the same was allowed by this Court vide order dated 14.07.2014, directing the learned trial Court to reconsider the matter. He further submits that the learned Addl. Sessions Judge, Ludhiana had proceeded on a misconceived approach, while passing the impugned order. Petitioner was the complainant. FIR No.87 dated 06.06.2012 under Section 304B/34 of Indian Penal Code was registered at Police Station Simlapuri, Ludhiana on the statement made by the petitioner. Deceased Jaspal Kaur was his sister. Accused Sh. Surinder Singh and his wife Smt. Prabhjot Kaur, who were sought to be summoned as additional accused to face the criminal trial, were the parents-in-law of the deceased. He next contended that there was sufficient evidence brought on record for summoning Sh. Surinder Singh and Smt. Prabhjot Kaur, as additional accused. Since the learned trial Court has misdirected himself while passing the impugned order, the same was liable to be set aside. In support of his contentions, learned counsel for the petitioner places reliance on the following judgments: -

1. Hardeep Singh Vs. State of Punjab 2014 (1) RCR (Crl.) 623 (SC)
2. Hardeep Singh Vs. State of Punjab 2008 (4) RCR 9(Crl.) 947 (SC)

3. Ranjit Singh Vs. State of Punjab 1998 (4) RCR 9 (CrI.) 552 (SC)
4. Santosh Kaur Vs. State of Punjab 2012 (2) RCR (CrI.) 613 (P&H)
5. Municipal Corporation Delhi Vs. Ram Kishan Rohtagi 1983
(1) RCR (CrI.) 73 (SC)
6. Dharam Pal and ors. Vs. State of Haryana and ors. (SC)
(Constitution Bench) 2014 (1) Cri. CC 798
7. Selvi J. Jayalalithaa Vs. Central Bureau of Investigation
(Madras) 2012 (1) MLJ (CrI.) 701 (Madras High Court)

He prays for setting aside the impugned order, by allowing the present revision petition.

On the other hand, learned Senior Counsel for respondents No.2 & 3 would contend that the impugned order was factually correct and legally justified which deserves to be upheld. To buttress his arguments, learned Senior Counsel for the private respondents places reliance on two judgments of the Hon'ble Supreme Court in "***Michael Machado and anr. Vs. Central Bureau of Investigation and anr. 2002 Vol. 3 SCC 262 and Hardeep Singh Vs. State of Punjab & ors. 2014 Vol. 3 SCC 92***". He prays for dismissal of the revision petition.

Having heard the learned counsel for the parties at considerable length and after giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar fact situation of the present case, instant one has not been found to be fit case warranting interference at the hands of this Court, while exercising its revisional jurisdiction. To say so, reasons are more than one, which are being recorded hereinafter.

Sh. Surinder Singh and his wife Smt. Prabhjot Kaur, parents-in-law of the deceased Jaspal Kaur are 75 years and 72 years old respectively, as recorded by the learned Addl. Sessions Judge in Para 16 of the impugned order dated 02.08.2014. It is also a matter of record that during the course of investigation, Sh. Surinder Singh and his wife Smt. Prabhjot Kaur were found innocent. Report under Section 173 Cr.P.C. was presented only against Dilraj Singh-husband of the deceased Smt. Jaspal Kaur. Sh. Surinder Singh and Smt. Prabhjot Kaur were placed in Col. No.2. A similar application was moved by the prosecution earlier also and the same was dismissed vide order dated 18.03.2013 by the learned trial Court, which is again a matter of record. While deciding the earlier revision petition filed by the petitioner bearing No.CRR-2227-2013, this Court remitted the case back to the learned trial Court, directing it to reconsider the matter.

However, it was made clear that directions issued to reconsider the matter will not be construed as an expressed opinion of this Court and the reconsideration aspect was left to the discretion of the learned trial Court. Operative Para 11 of the order dated 14.07.2014 passed by this Court, reads as under: -

“It is clarified that the directions contained in the present order to re-consider the matter may not be construed that this Court has in any manner expressed any opinion as regards respondents No.2 and 3 to be summoned as additional accused. Such aspect is to be dealt by the trial Court at the stage of passing the order afresh and on merits.”

In compliance of the above-said order passed by this Court,

learned trial Court re-considered the matter and recorded cogent reasons for arriving at a judicious conclusion that no case for summoning Sh. Surinder Singh and his wife Smt. Prabhjot Kaur, as an additional accused, was made out. Accordingly, the application under Section 319 Cr.P.C. was dismissed vide impugned order dated 02.08.2014.

The complainant-present petitioner appeared before the learned trial Court as PW1, Jaswinder Singh-cousin of deceased Jaspal Kaur appeared as PW2 and Smt. Baljit Kaur who was sister-in-law of deceased Jaspal Kaur appeared as PW3. The learned trial Court discussed each and every relevant aspect of the matter, while passing the impugned order. Statements of all these three material witnesses were taken into consideration. The reasons recorded by the learned trial Court in Para 13 to 18 of the impugned order deserve to be referred here and the same read as under: -

“13. During his cross-examination complainant admitted that Jaspal Kaur, his sister i.e. deceased was very sensitive and emotional lady and she used to write the diary. He has seen the diary and identified the handwriting of his sister, in Hindi and English and proved the contents of diary. He has further admitted that photographs shown to him in the Court are of his sister and Dilraj Singh, when they had gone to Jodhpur in February, 2012 and they came back from Jodhpur within month and he has proved the photographs Ex.DY/1 to DY/16. He again stated that accused Dilraj Singh and Jaspal Kaur went to Jodhpur in April, 2012 and he denied the suggestion that accused also took his sister to Mansa Devi, Haridwar. He further

deposed that his father died before the marriage of his sister Jaspal Kaur and share of land of two acres were already mutated in the name of Jaspal Kaur, before her marriage and complainant was cultivating the said land of two acres which is joint land and till date, the said land is joint land and has never been partitioned.

14. Further, I have carefully perused the diary Ex.DX, which has been stated to be written by the deceased pertains to the period started from 3.2.1998 and the last entry in the diary was of 24.2.2012 and it has been further revealed that after the marriage of Jaspal Kaur, there are entries dated 27.12.20009, 18.9.2011 and 24.2.2012 and in her all the three entries she did not record anything against her mother in law or father in law and the entries were regarding her in-cordial relations with her husband. The most relevant entry in this regard is of 24.2.2012, just four months before the occurrence and according to the said entry, Jaspal Kaur, four days, prior to the said entry visited to different Gurudwaras and Mandir along with her husband Dilraj Singh and she and her husband had wished something and she was hopeful of fulfilling the said wish very soon. Though complainant in his cross-examination denied of any trip of Mansa Devi and Haridwar, but reference of the same has been mentioned in the diary of Jaspal Kaur. Further, complainant in his evidence stated that in the month of April, 2012, Jaspal Kaur and Dilraj Singh went to Jodhpur and they came back within a

month, then if in the month of April, 2012 Dilraj Singh and Jaspal Kaur were together, then how she could be given beatings by Prabhjot Kaur and Surinder Singh and thrown her out of her matrimonial home. Though complainant in his testimony also recorded the specific name that Jaspal Kaur was harassed and given beatings by Surinder Singh, Probhjot Kaur and Dilraj Singh for the alleged demand of share of Jaspal Kaur which she received from her parental side and she was given beatings on account of the same.

15. On the other hand, Jaswinder Singh, who was cousin of Jaspal Kaur, has also been examined by the prosecution as PW2, who recorded that since couple have no child, after the marriage, accused Probhjot Kaur and Surinder Singh used to taunt her for not becoming mother, however, no such allegation has been leveled by the complainant and PW3, the brother and sister in law of the deceased. Moreover during his cross-examination he i.e. PW2 further stated that in his presence, Probhjot Kaur and Surinder Singh never scolded Jaspal Kaur for not conceiving the child. The allegation qua demand of money & dowry and demand of share in the land qua the share of Jaspal Kaur were against Dilraj Singh and the said witness further recorded that in April, 2012 Prithipal Singh had visited to the house of Dilraj Singh, where Jaspal Kaur told Baljit Kaur her sister in law that accused Dilraj Singh pressurizing her to sell the land of her share and there is no such allegation has been

levelled against Surinder Singh and Probhjot Kaur, father in law and mother in law of Jaspal Kaur.

16. Further Surinder Singh, father in law of the deceased moved one application bearing No.CR No.7836 dated 25.6.2012 to the Commissioner of Police for reinvestigation of the case and said application was marked to Addl. ACP and detailed inquiry has been conducted. From the bare perusal of the inquiry report, it reveals that statements of number of neighbourers have been recorded during the inquiry and they recorded that Jaspal Kaur married with Jaspal Kaur about four years ago and there is no child out of the said wedlock and because of the said reason, she used to upset. Since Dilraj Singh was only doing the private job and has very less income and because of the said reason also, they used to fight with each other and 4/5 months before the occurrence. Dilraj Singh and Jaspal Kaur were separated on the first floor of the house and they had their separate mess and since Surinder Singh, who is about 75 years old and Probhjot Kaur 70/72 years old, they had difficulties to go upstairs and it has come in the inquiry that Surinder Singh and Probhjot Kaur had never harassed deceased Jaspal Kaur on account of demand of dowry.

17. Though the report given by Addl. ACP is not binding on the court and cannot be said to be conclusive, but since after the investigation of the present case by the police, no further or new evidence or fact come on record, neither in the investigation nor

*during the testimony of PW1 in the court, with regard to the role of Surinder Singh and Probhjot Kaur, in the commission of offence. His statement made in the Court is in verbatim what he recorded before the police in which thorough investigation has been conducted. Moreover, in the case titled as **Brindaban Dass vs. State of West Bengal, (SC) 2009 (i) RCR (CrL.) 672** it was held by the Hon'ble Supreme Court that the Trial Court can summon the accused if additional evidence comes before it, there was a chance of conviction on the basis of fresh material, but in the present case as discussed above, no additional evidence or fresh material come on record in their evidence of the prosecution to summon Surinder Singh and Probhjot Kaur.*

18. Moreover, firstly the allegations of the complainant that after the marriage Surinder Singh and Probhjot Kaur started taunting Jaspal Kaur on account of demand of less dowry, is vague and secondly, the allegation qua giving of Rs.10000/- for mattress was only against Dilraj Singh, in the complaint Ex.PA, but during his testimony before the court, complainant also added the name of parents of Dilraj Singh, which seems to be an improvement made by him in his testimony before the court, in order to rope the parents of Dilraj Singh in the instant case. So far as the allegations of beating to Jaspal Kaur in April, 2012 and thrown her out of her matrimonial home, is also not found correct version as according to the complainant, Dilaraj Singh and Jaspal Kaur visited to Jodhpur in the month of April, 2012

and Jaswinder Singh PW2 in his testimony before the Court deposed that Pritpal Singh and his wife Baljit Kaur, sister in law of Jaspal Kaur had visited to the house of Jaspal Kaur, whereby she discloses the reason of fight between Dilraj Singh and Jaspal Kaur with regard to demand of sale of share of land, after the death of her father and there is no such allegation with regard to same has been made qua Surinder Singh and Probhjot Kaur. It is settled law that power under Section 319 Cr.P.C. is discretionary power and the Court could summon another person as additional accused only for compelling reason and when there is no sufficient evidence on the basis of which it could be ascertained that if the allegation and the statement of the complainant to be considered as true on its face value, than the conviction of the person, could be sought as additional accused, then no such power should be used. In the instant case, there is no sufficient evidence collected during the trial or enquiry, in order to even prima facie show that Surinder Singh and Probhjot Kaur, committed the offence and they are required to be summoned as additional accused, to face the trial along with Dilraj Singh, accused, already facing the trial.”

A bare reading of the abovesaid reasons recorded by the learned trial Court would show that the reasons were factually correct and legally justified because of which the impugned order deserves to be upheld.

Coming to the judgments relied upon by learned counsel for the petitioner, there is no dispute about the law laid down therein. However, on

close perusal of the cited judgments, except the Constitution Bench judgment of the Hon'ble Supreme Court in Hardeep Singh's case (supra) relied on by both the parties, none of the judgment has been found of any help to the petitioner, being distinguishable on facts. Further, it is the settled proposition of law that peculiar facts of each case are to be examined, considered and appreciated first before applying any codified or judgemade law thereto. Sometimes, difference of one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533.**

Although, Section 319 Cr.P.C. gives ample powers to the Court to summon any person either named or not named in the FIR, yet the said discretionary power has to be used sparingly and with circumspection. By now, it is the settled proposition of law, as laid down by the authoritative judicial pronouncement by the Constitution Bench of the Hon'ble Supreme Court in **Hardeep Singh's case (supra)**, that only making out a prima facie case against the persons sought to be summoned as additional accused, is not sufficient. The requirement is of more than a prima facie case but short of satisfaction to an extent that the evidence, if goes unrebutted would lead to conviction. In the absence of more than a prima facie case, the Court should refrain from exercising its powers under Section 319 Cr.P.C.

The relevant observations made by the Hon'ble Supreme Court in Para 99 of the judgment, which can be gainfully followed in the present case, read 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 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".

The Hon'ble Supreme Court used a word of caution for the learned trial Courts, while exercising their powers under Section 319 Cr.P.C. on many occasions earlier as well. The observations made by the Hon'ble Supreme Court in Paras 11 to 14 of its judgment in Michael Machado's case (supra), which aptly apply to the present case, read as under: -

"11. The basic requirements for invoking the above section is that it should appear to the Court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the Court entertained

some doubt, from the evidence, about the involvement of another person in the offence. In other words, the Court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well as tried along with the already arraigned accused.

12. But even then, what is conferred on the Court is only a discretion as could be discerned from the words “the Court may proceed against such person”. The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the Court should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the Court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the Court to proceed against other persons.

*13. In **Municipal Corporation of Delhi v. Ram Kishan Rohtagi & ors., 1983 (1) RCR (CrL) 73: 1983 (1) SCC 1** this Court has struck a note of caution, while considering whether prosecution can produce evidence to satisfy the Court that other accused against whom proceedings have been quashed or those who have*

not been arrayed as accused, have also committed an offence in order to enable the Court to take cognizance against them and try them along with the other accused. This was how learned Judges then cautioned:

“But we would hasten to add that this is really an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken.”

14. The Court while deciding whether to invoke the power under Section 319 of the Code, must address itself about the other constraints imposed by the first limb of sub-section (4), that proceedings in respect of newly added persons shall be commenced afresh and the witnesses re-examined. The whole proceedings must be re-commenced from the beginning of the trial, summon the witnesses once again and examine them and cross-examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are quite large in number the Court must seriously consider whether the objects sought to be achieved by such exercise is worth wasting the whole labour already undertaken. Unless the Court is hopeful that there is reasonable prospect of the case as against the newly brought accused ending in conviction of the offence concerned we would say that the Court should refrain from adopting such a course of action.”

Reverting back to the case in hand and respectively following the law laid down by the Hon'ble Supreme Court in the cases referred to hereinabove, this Court feels no hesitation to conclude that the learned trial Court has rightly followed the law laid down by the Hon'ble Supreme Court, while not exercising its power under Section 319 Cr.P.C., for arriving at a judicious conclusion and the impugned order deserves to be upheld, for this reason also.

In fact, from the combined reading of the statements of PW1 to PW9 placed on record by learned counsel for the private respondents, it has been found that the learned trial Court proceeded on a factually correct and legally justified approach, while passing the impugned order. Sh. Surinder Singh and his wife Smt. Prabhjot Kaur had no role to play. They are senior citizens being 75 years/72 years of age. Petitioner himself has admitted in his cross-examination that his sister Smt. Jaspal Kaur deceased, was very sensitive and emotional lady. Despite the fact that long time had elapsed after the marriage, Smt. Jaspal Kaur deceased was not having any child.

The Hon'ble Supreme Court reiterated its view taken in Hardeep Singh's case (supra) in its latter judgment in the case of **Babubhai Bhimabhai Bokhiria and others Vs. State of Gujarat and others 2014 (5) SCC 568** and observed in Para 7 of the judgment, that a person can be summoned only where strong and cogent evidence occurs against him from the evidence led before the Court. It was held that the principle to be applied is the one which is more than a prima facie case and not as exercised at the time of framing of charge. Under these circumstances, it can be safely concluded that the learned Addl. Sessions Judge committed no error of law, while passing the impugned

order and the same deserves to be upheld.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered opinion that it was rightly held by the learned trial Court that no case for summoning of Sh. Surinder Singh and his wife Smt. Prabhjot Kaur was made out. The present criminal revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, instant criminal revision petition is dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

24.03.2015
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