

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

**Criminal Revision No.3259 of 2015 (O&M)
Date of decision: 02.09.2015**

Vikash

..Petitioner

Versus

State of Haryana and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment? Yes/No**
- 2. To be referred to reporters or not? Yes/No**
- 3. Whether the judgment should be reported in the Digest? Yes/No**

Present: Mr. Anjum Ahmed, Advocate
for the petitioner.

Daya Chaudhary, J.

CRM-28562 of 2015

There is delay of 11 days in filing this revision petition.

Application is allowed as per the grounds mentioned therein and delay of 11 days in filing this revision petition is condoned.

CRR-3259 of 2015

The present revision petition has been filed to challenge the impugned order dated 21.05.2015 passed by learned Additional Sessions Judge, Bhiwani, whereby application filed by the prosecution under Section 319 Cr.P.C. for summoning the persons, namely, Smt. Balto, Anil, Mukesh, Smt. Suresh, Chhatar Singh and Kesar Devi as additional accused to face trial in case FIR No.77 dated 09.03.2014

registered under Section 304-B of Indian Penal Code at Police Station Tosham, has been dismissed.

Learned counsel for the petitioner submits that the impugned order has been passed illegally and the same is contrary to the material evidence available on record. The local Police was hand in gloves with the accused persons and only accused-Mukesh was arrested and other persons against whom specific allegations were there, have been exonerated during investigation. Learned counsel also submits that there were not only specific allegations in the statement recorded under Section 161 Cr.P.C. and under Section 164 Cr.P.C. but specific roles were also assigned in the statements of other witnesses. The allegations against persons sought to be summoned were the same as against accused-Mukesh, which is clear from the statement of the complainant still application moved under Section 319 Cr.P.C. has been dismissed.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order under challenge.

The aforesaid FIR was registered on the basis of complaint made by the petitioner-complainant against accused-Mukesh and respondents No.2 to 7. The challan was presented against accused-Mukesh only and respondents No.2 to 7 were found innocent during investigation. Thereafter, an application was moved by the prosecution under Section 319 Cr.P.C. for summoning aforesaid persons as additional accused to face trial along with

accused-Mukesh, who is already facing trial. Said application was dismissed vide order dated 21.05.2015, which is subject matter of challenge in the present revision petition.

While dismissing application moved by the prosecution under Section 319 Cr.P.C., it was specifically mentioned that all the persons sought to be summoned were found innocent in the investigation as they were residing separately. Only the deceased and accused-Mukesh were residing together. Mukesh being husband of the deceased is the main accused. The persons sought to be summoned were having separate ration cards and it was also found during investigation that they were residing separately. Not only the documents of living separate was with the Investigating Agency but many affidavits were also filed by the villagers, which were considered during investigation. It was also found that the persons sought to be summoned were cultivating their land separately. A specific demand of ₹5 lacs was made by accused-husband, namely, Mukesh and challan was presented against him.

The impugned order has been challenged on the ground that same allegations were levelled against the persons sought to be summoned and Police was hand in gloves with the accused persons, therefore, they were declared innocent in the investigation.

Section 319 Cr.P.C., which is relevant to decide the controversy, reads as under: -

“319.Power to proceed against other persons

appearing to be guilty of offence.-

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

As per provisions of Section 319 Cr.P.C. in case, any evidence has come during any inquiry or trial from which it appears that any other person has also committed offence and can therefore, be summoned and tried with the accused already facing trial. The

relevant words in the said section are “it appears from the evidence”. It is clear that there should be some material to infer that the persons sought to be summoned were involved in commission of the offence but they have not been challaned. The discretion is with the Court, which has been provided under Section 319 Cr.P.C. but that discretion is to be exercised very sparingly and with due care and caution and only when the summoning Court is satisfied that the offence has also been committed by such person and there is evidence on record to show that such person is also involved in commission of offence. The question of testing the evidence is not only on the basis of statement but it is to be seen by the Summoning Court that sufficient material evidence is there for forming an opinion that such person sought to be summoned is also involved in the offence along with other accused, who are already facing trial. The word “evidence” occurring in sub-section (1) is used in a comprehensive and broad sense which would also include the material collected by the Investigating Officer and the material or evidence which has come on record before the Court from which, the Court can *prima facie* conclude that the person, who has not arraigned as accused but is also involved in commission of crime.

Undisputedly, it is not enough that only on the basis of suspicion, the Court is to form an opinion regarding involvement of said person in the commission of the offence. 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 said person could as well as be tried along with the other accused, who are facing trial.

For attracting the provisions of Section 319 Cr.P.C., not only the evidence is to be seen but sufficient and cogent reasons are also required to be assigned by the Court to satisfy the ingredients of the provisions.

In the present case, respondents No.2 to 7 were found innocent in the investigation and reasons have also been recorded that they were residing separately; having separate ration cards; no specific demand of dowry was there and no harassment was caused to the deceased immediately before the death. Specific allegations are there only against the main accused Mukesh, who is already facing trial.

In view of the facts as mentioned above, there is no merit in the contentions raised by learned counsel for the petitioner and the revision petition being devoid of any merit is dismissed.

02.09.2015
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(DAYA CHAUDHARY)
JUDGE