

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

CRR No. 425 of 2015 (O&M)

Date of Decision:- 24.09.2015

Leela Krishan Thareja and another

....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

**Present: Mr. Manoj Bajaj, Advocate,
for the petitioners.**

**Mr. Neeraj Poswal, A.A.G., Haryana
for the State.**

**Mr. Shekhar Verma, Advocate
for respondent No.2.**

SHEKHER DHAWAN, J.

Present revision petition against order dated 17.01.2015 passed by learned Additional Sessions Judge, Faridabad in Sessions case No.195 of 03.10.2014 whereby petitioner was summoned under Section 319 Cr.P.C. as additional accused in case FIR No.332 dated 22.09.2014, under Sections 304-B, 302 and 34 IPC, P.S. Old Faridabad.

2. Relevant facts of the case that complainant Gurpyar Singh Dhupar reported that his sister, namely, Manjit @ Ritu (deceased) was married to Manoj Kumar Thareja. Same was her second marriage. After

two weeks of the marriage, his sister Manjit @ Ritu was harassed by her husband and in-laws. On 21.09.2014 complainant received telephonic information that his sister was murdered by Manoj and his family members. After investigation, the challan was presented in the Court. During trial, statement of complainant Gurpyar Singh Dhupar was recorded as PW1 and application under Section 319 Cr.P.C. was filed for summoning of petitioners as well as the others i.e. brothers-in-law, as well as sisters-in-law as additional accused. Learned Additional Sessions Judge vide order dated 17.01.2014 summoned the petitioners as additional accused.

3. Learned counsel for the petitioners submitted that application under Section 319 Cr.P.C. was accepted by the trial Judge thereby passing the order of summoning of petitioners Leela Krishan Thareja and Asha Rani Thareja, whereas the application was dismissed qua summoning of remaining persons named in the application.

4. Learned counsel for petitioners also submitted that complainant while deposing as PW-1 did not give any particulars to even remotely suggest the alleged involvement of the petitioners and as such the order passed on an application under Section 319 Cr.P.C. not maintainable. Plea was also taken that husband Manoj Kumar Thareja was living separately with his wife Ritu and they were having a separate ration card and gas connection. Complainant had wrongly given the common address of father and son only. In fact petitioners were living with their sons, namely, Sanjay and Devender. There was no external injury over the body of the deceased suggesting that any external force was used for causing the death.

5. Learned counsel for the petitioners submitted that power of the Court while deciding the application under Section 319 Cr.P.C. is extraordinary power and that should be used only if evidence on record suggest the conviction of persons sought to be summoned. On this point reliance was placed upon judgment from Hon'ble Supreme Court in case **Sarabjit Singh Vs. State of Punjab and another**, 2009(3) RCR (Criminal) 388 and **Y. Saraba Reddy Vs. Puthur Rami Reddy and another**, 2007(2) R.C.R. (Criminal) 1014.

6. While arguing on this point, learned counsel for respondents submitted that learned trial Judge has rightly exercised discretion lawfully vested in it on the basis of facts and evidence available on the file. First of all in the report under Section 173 Cr.P.C. there were allegations against the present petitioners, so, they are to be tried. More so, petitioners were living with the deceased at the time of unfortunate incident and all these facts were detailed by complainant while appearing in the witness box as PW-1 and same was duly considered by learned trial Judge while passing the order under challenge and the revision petition is not maintainable. In support of his arguments, learned counsel representing the complainant placed reliance upon judgment from Hon'ble Supreme Court in case **Hardeep Singh Vs. State of Punjab**, 2014(1) R.C.R. (Criminal) 623.

7. Having considered the submissions made by learned counsel for the parties and the facts of the case and material and evidence available on file, this Court is of the considered view that learned trial Judge exercised the jurisdiction lawfully vested in it under Section 319 Cr.P.C. For ready reference, provision under Section 319 Cr.P.C. is being

reproduced: -

“(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.”

8. The above referred provisions makes it ample clear that if during the course of an inquiry or trial it appears from the evidence that any person not being an accused has committed the offence for which such a person should be tried together with the accused, he/they can be summoned to face trial.

9. Such power is to be exercised by the Court and not by any officer acting as Court. As per law laid down by Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab** case (supra) the power under Section 319 Cr.P.C., can be exercised only by a Court of Sessions or a court of Magistrate performing the duties as a Court under the Cr.P.C. and that can utilize the material before it for the purpose of the said section. Hon'ble Supreme Court also observed that such a power can be exercised during

trial which is certainly distinguishable from inquiry and the trial commence only when charges are framed. As regards to plea taken by learned counsel for the petitioners that power under Section 319 Cr.P.C. can be exercised only on the basis of additional evidence coming before the Court by way of statement and for that purpose no statement recorded during investigation can not be looked into. Such a controversy was decided by Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab** case (supra) that as a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. That inquiry under Sections 200, 201 and 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. Hon'ble Supreme Court observed that 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

10. Applying the same provisions of law, learned trial Judge perused the statement of witnesses under Section 161 Cr.P.C. and statement of PW- recorded before the Court and observed that there are specific allegations against the present petitioners Leela Krishan Thareja and Asha Rani Thareja.

11. Learned trial Judge recorded the observations on the basis of material and evidence available on file. There was nothing on the file that Leela Krishan Thareja and Asha Rani were living separately from the deceased and her husband at the time of commission of offence and the

order dated 17.01.2015 was passed for summoning of Leela Krishan Thareja and Asha Rani as additional accused to face the trial. Learned trial Judge rightly dismissed the application qua Sanjay Thareja, Vandana Thareja and Devender Thareja, as there was no material or evidence against them.

12. In view of above, the present revision petition is without any merit and same stands dismissed.

September 24, 2015
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(**SHEKHER DHAWAN**)
JUDGE