

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 2823 of 2012
Date of decision : August 19, 2016

Kapoor Kaur

....Petitioner

versus

State of Haryana

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. DS Pheruman, Advocate, for the petitioner
Mr. Munish Sharma, AAG, Haryana, for
respondent no. 1-State
Mr. RN Lohan, Advocate, for Jitender Kumar-respondent no. 2

Fateh Deep Singh, J. (Oral)

This is a criminal revision against an order dated 18.8.2012 by aggrieved complainant Kapoor Kaur who has sought to challenge impugned findings of the court of learned Additional Sessions Judge, Jind whereby her application under section 319 Cr.P.C. for summoning Jitender Singh as an additional accused stood dismissed.

Heard Mr. DS Pheruman, Advocate, for the petitioner, Mr. Munish Sharma, AAG, Haryana, for respondent no. 1-State and Mr. RN Lohan, Advocate, for Jitender Kumar-respondent no. 2 and perused the

record.

A case by way of FIR No. 38 dated 13.7.2011 under sections 302, 201, 120-B, 497, 34 IPC was registered at Police Station Alewa, though initially it was lodged by accused Baljinder Kaur now overtaken by Kapoor Kaur (in short complainant). In her allegations it was the stand of the prosecution that a marriage between Baljinder Kaur and Kuldeep Singh son of the complainant now deceased took place on 22.12.2010. The deceased was serving in Doha Qatar. It is alleged that in his absence the wife accused Baljinder Kaur developed illicit relations with Narvail Singh her co-accused and both of them in connivance with Jitender Singh brother of Baljinder Kaur hatched a criminal conspiracy to eliminate her husband. On 19.4.2011 when Kuldeep Singh arrived in India and at night when he along with Baljinder Kaur went to sleep, it is alleged that the wife administered some poisonous substance in the milk as a consequence of which the condition of the husband deteriorated and inspite of medical aid he died within few hours. It was during the course of trial, an application was moved under section 319 Cr.P.C. for summoning as additional accused and consequent thereupon the aggrieved complainant has come up before this Court.

Appreciating the submissions of the two sides and on perusal of the record and the complaint Annexure P/1 made by the mother of the deceased no specific role is attributed to the brother of accused Baljinder Kaur namely Jitender Singh in the commission of the crime neither the

complainant is a witness to it and there are only vague and ambiguous allegations which can by no means be termed as evidence. As has been canvassed before this Court by the counsel for the State assisted by Mr. Lohan, counsel for Jitender Singh, admittedly, as is there in the post mortem report and subsequent report of the Expert death has occurred due to poisoning which is opined to be aluminium phosphide. The only semblance of evidence that has come on the record is by way of disclosure statement of co-accused Narvail Singh Ex. PB made on 14.7.2011 and that of Baljinder Kaur the same very day leading to recovery of the alleged container of the article which was administered to the deceased. Even accused Baljinder Kaur who initially was the complainant has co-related in her initial complaint to the police the manner of death of the deceased and has termed it to be a suicide by her husband as he had taken mistakenly poisonous medicine and has died. It was thereupon proceedings under section 174 Cr.P.C. were initiated and subsequently the mother had taken up the issue leading to the registration of the case. The evidence till date recorded by the trial court and prior to it during the investigation and statements comprising mother of the deceased, Ravinder Singh and Davinder Singh PWs and during the inquest proceedings do not carry any allegations against the person so sought to be summoned as additional accused. Kapoor Kaur has been very well confronted with the statement earlier made during the police proceedings where there is total improvement in court qua the person which is sought to be summoned as additional

accused. There is nothing suggestive as to the complicity of this person in the alleged crime and whatever has come across is subsequent belated afterthought improvement. Even in the deposition of PW2 Harvinder Singh one of the brother of the deceased he has stated that he suspects the role of Jitender Singh brother of Baljinder Singh. A mere suspicion cannot take the place of proof and evidence. Learned counsel for the petitioner Mr. Pheruman with all fairness has conceded to at the bar that right since the inception of the prosecution there is no attribution made against the brother of Baljinder Kaur. PW3 Natha Singh is witness to the disclosure statement of Narvail Singh while in police custody and thus the very statement of co-accused, its legality and acceptability is a debatable issue which cannot take the place of proof and so is the deposition of PW5 Darshan Singh not much to hold ground for the prosecution to this effect.

The Hon'ble Apex Court considering the very ambit of section 319 Cr.P.C. in **Hardeep Singh vs State of Punjab (SC), 2014 AIR (SCW) 667** had defined the term evidence as a comprehensive one which includes evidence collected during the investigations as well as during the trial. Certainly what is reflected from the records of the case and could not be controverted by the counsel for the revisionist, there is nothing tangible by way of evidence collected during the inquiry by the police and what has come up during the trial is half baked attempt probably with ulterior motive as Jitender Singh happens to be the brother of Baljinder Kaur and the court has to be cautious in ensuring that such a process is not put to misuse to

make sinister gain with an oblique motive. Provisions of section 319 Cr.P.C. are on a higher pedestal and needs greater amount of evidence which is more reliable, cogent and duly corroborated by all means. The trial had completed and the case has been decided vide judgment dated 17/22.4.2013 and thus, at this belated stage this application has come up and there is no concrete material that has come up by way of evidence against the person so sought to be newly added as an accused. In **Hardeep Singh's** case (supra), their Lordships were of the view that judicial discretion was of primacy and the pre-requisite for the exercise of said power is akin to prima facie case whether a court must comes to conclusion in order to take cognizance of offence there ought to be reliable and tangible evidence though no strait jacket formula can be laid down as condition precedent for the exercise of such powers under section 319 Cr.P.C. but at the same time it needs to be ensured that a person is not unduly put to harassment by such exercise of the process else it will undermine the very sanctity of the judicial dispensation of justice.

The court below while coming to the conclusion as detailed at length the evidence that has come during the inquiry and the trial and has rightly concluded that the evidence which is subsequent there during the trial is a totally newly introduced belated one not at all supported by the evidence collected during the inquiry and thus a big question mark is put over the credibility and the reliability of such evidence. Since the petitioner has come up in revision which has very restricted approach to adjudicate as

to the very legality and validity of the impugned order. Counsel for the revisionist could not convince this Court how the impugned order is illegal and perverse necessitating intervention by this Court. The revision petition being devoid of any merit is hereby dismissed.

August 19, 2016
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(Fateh Deep Singh)
Judge

<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>