

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR No. 2699 of 2015

Date of decision : 15-12-2016

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Gurbinder Kaur

.....Petitioner

Versus

State of Punjab and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Ms. Ruchi Sekhri, Advocate for the petitioner.

Ms. Manpreet Dhaliwal, AAG, Punjab.

Mr. Veer Inder Singh Dhindsa, Advocate for respondent no.2.

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RITU BAHRI, J.

The petitioner has challenged the order dated 19.5.2015, passed by the Court of Additional Sessions Judge, Fatehgarh Sahib whereby the application under Section 319 Cr.P.C was allowed and petitioner Gurbinder Kaur wife of Avtar Singh was ordered to be summoned to face trial under Section 306 IPC as an additional accused.

On 15.3.2014, the complainant Baljinder Singh got recorded a DDR No.36 at Police Station Bassi Pathana regarding missing of his daughter, Jagjit Kaur (Annexure P-1). The FIR no.30 was got registered after delay of 5 days i.e on 20.3.2015 under Section 306 IPC at Police

Station Bassi Pathana (Annexure P-2) with the allegations that daughter of Baljinder Singh the complainant, Jagjit Kaur committed suicide by jumping into Bhakra canal due to harassment meted out to her by Parminder Singh @ Pindi, his mother Gurbinder Kaur (the present petitioner), Harpreet Singh @ Rambo and Gurpreet Singh @ Amanu.

After conducting the investigation, the challan under Section 173 Cr.P.C was prepared against the accused Parminder Singh @ Pindi, Gurpreet Singh @ Amnu and Harpreet Singh @ Rambo. Gurbinder Kaur was kept in column no.2. The accused against whom challan was presented were charge sheeted vide order dated 15.10.2014. The prosecution recorded the evidence of PW-1, ASI Balbir Singh on 7.2.2015 and PW-2 Baljinder Singh and partly cross examined them on 24.3.2015. Thereafter, the application under Section 319 Cr.P.C was filed for summoning Gurbinder Kaur. The application has been allowed taking into account that the complainant Baljinder Singh while appearing as PW-2 had given the name of Gurbinder Kaur while recording his statement on 20.3.2014 to Inspector Jaswant Singh and thereafter, the FIR was got registered. Her name was again mentioned in the examination in chief of Baljinder Singh and he had reiterated this version while appearing as PW-2. The suicide note which was recovered from the scooter of Jagjit Kaur had also been made a basis for presenting a challan against the accused.

Counsel for the petitioner has argued that as per the enquiry report (Annexure P-4), the petitioner Gurbinder Kaur was kept in column no.2 on the ground that immediately before the date of the incident Jagjit Kaur was not in touch with Gurbinder Kaur on her mobile and that she was in touch with the other accused on their mobile phones. Since Gurbinder

Kaur had never contacted Jagjit Kaur telephonically or directly, at any point of time, hence there was nothing to instigate Jagjit Kaur to commit suicide on the part of Gurbinder Kaur. He has further argued that the suicide note was recovered after five days i.e 20.3.2014, whereas she had gone missing on 15.3.2014. Thus, the suicide note cannot be made basis for summoning her as an additional accused. He has further referred to the cross-examination of PW-2 Baljinder Singh (Annexure P-6), where he has stated that it was one Nirmal Singh who was going on a tractor with trolley loaded with sand who had informed him that his daughter was behind his tractor, whereas the accused were in front of his tractor. He further admitted that he did not give the name of Nirmal Singh in any of the statement of Police.

Learned counsel for the petitioner has further argued that even in the statement made by Nirmal Singh under Section 161 (Annexure P-7), he has not mentioned about the presence of the petitioner at the time when the girl jumped into the canal. Hence, the trial Court has wrongly allowed the application under Section 319 Cr.P.C and summoned the petitioner as an additional accused. Nirmal Singh while appearing as PW-4 on 6.11.2015 has not been able to identify any of the accused, who are already facing a trial i.e Parminder Singh, Harpreet Singh and Gurpreet Singh and he has denied that he ever got recorded the statement to the police earlier. As eye witness Nirmal Singh has resciled from his statement there is no evidence against the present petitioner to be summoned as an additional accused to face a criminal trial.

Counsel for the petitioner has referred to various judgments in support of his contentions. In a judgment passed by Hon'ble the Supreme Court of India in *M.Mohan vs. State Tr. Dy. Supdt. Of Police 2011 (3)*

SCC 626, it was held that abetment involves a mental process of instigating a person or intentionally aiding a person in doing of thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. In order to convict a person under Section 306 Indian Penal Code there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide. In this case bride was not allowed to use family car on one occasion. A taunt was given to her by her Jethani that she should bring the car from her father if she wanted to travel in car. Bride committed suicide after 4 days of taunt held. It was held that the appellants (mother of husband and his brother) were not remotely connected with the offence under Section 306 Indian Penal Code.

Reference was also made to a judgment of Hon'ble Supreme Court of India in the case of ***Amalendu Pal @ Jhantu vs. State of West Bengal, 2010(1) SCC 707***, wherein wife committed suicide due to cruelty and harassment of husband. It was held that the accused cannot be held guilty of offence of abetment. It is only when Court finds that by infliction of cruelty and harassment meted out to the victims had left the victim with no other alternative but to put an end to her life. In cases of abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. It was further held that in order to bring a case within purview of Section 306 of Indian Penal Code there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by

an act of instigation or by doing certain act to facilitate the commission of suicide.

In another judgment passed by Delhi High Court in the case of ***Ajit Singh vs. State (Govt. of N.C.T. Of Delhi) 2010 (6) RCR (Criminal) 2234***, wherein there was a dispute over a plot of land. Petitioner and deceased were real brothers. Suicide note does not made any reference to the two incidents described by complainant. No reference of any act or incident whereby petitioner alleged to have committed any wilful act or omission or intentionally aided or instigated deceased for committing this act. Hence FIR was quashed. It was held that the contents do not make out offence against petitioner.

In another judgment passed by the Supreme Court of India in the case of ***Netai Dutta vs. State of West Bengal 2005 AIR (SC) 1775***, wherein the worker of a company committed suicide. Suicide note by deceased stated that accused engaged him in several wrong doings. Suicide note showed that deceased was dissatisfied with working conditions. Deceased remained absent for two years and committed suicide. In suicide note, there is no reference which showed that accused committed any willful act or omission or intentionally aided or instigated the deceased in committing suicide. Contents of suicide note did not make out the offence. Prosecution was quashed.

Counsel for the petitioner has further argued that the suicide note was sent to Forensic Science Laboratory, Punjab and as per its report (Annexure P-5), the opinion has been given as under:

“ It has not been possible to express any definite opinion regarding the common authorship or

otherwise on the red enclosed questioned signature stamped and marked Q2 in comparison with red enclosed standard signature similarly stamped and marked A12. More suitable and sufficient admitted signatures of Jagjeet Kaur in “Gurmukhi” already existing on some documents and near about the period of questioned signature stamped and marked Q2 are required.”

As per the opinion given, there is no definite observation on the suicide note and even in the deposition of PW-2, Baljinder Singh and that of statement of Nirmal Singh (Annexure P-7), the name of the petitioner has not been mentioned that she instigated the daughter of Baljinder Singh to commit suicide.

At the same time counsel for the respondent has referred to a judgment of Hon'ble the Supreme Court of India in the case of ***Hardeep Singh vs. State of Punjab and others, 2014 (3) SCC 92***, wherein the entire law regarding summoning of a person as an additional accused has been reiterated. He has supported the impugned order and has argued that the suicide note which was made the basis for summoning the accused is sufficient evidence to summon the present petitioner as she has been attributed the same role as the accused and on account of the fact that she did not telephonically contacted the deceased on the date when she jumped into Bhakra canal would not be a ground sufficient not to summon her to face the trial.

After hearing counsel for the parties, the impugned order by which the petitioner has been summoned to face the trial has been passed by relying upon the same evidence on the basis of which, the other accused

were charge sheeted. As per the FSL report (Annexure P-5) there were certain similarities in the pattern of writing. We can refer to the deposition of PW-2, Baljinder Singh (Annexure P-6). In his examination-in-chief he identified the handwriting of his daughter in note book Ex.P-19. He identified the signatures of his daughter Jagjit Kaur on passport Ex. P-20 and also identified the diary Ex. P-21 recovered from her moped. He also identified the handwriting of his daughter on her suicide note Ex.P-22

In the statement of Nirmal Singh (Annexure P-7), the present petitioner Gurbinder Kaur was not present when he had seen the daughter of the complainant and the three boys near the canal. However, once the suicide note has been made basis for summoning the other accused and in which same role has been attributed to the petitioner than as per the guidelines laid down by the Supreme Court in the case of Hardeep Singh (supra), the present case falls under the category of Question No.3.

3. Question

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.

Answer

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 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.

In the present case, the suicide note and the FSL report was already part of the investigation when the challan was presented against the accused facing trial. As per the FSL report (Annexure P-5) the signatures on the suicide note did tally with the signatures on the handwriting document given before the FSL and Baljinder Singh in his examination in chief had identified her daughter's handwriting in the notebook (Ex. P-19) passbook (Ex. P-20) and the diary (P-21). Once the admitted signatures were the part of the investigation, the same evidence has rightly been made basis to summon the petitioner to face the trial. Even if immediately before jumping into the canal, she did not have any telephonic conversations with the petitioner, the role of the present petitioner cannot be ignored.

In view of all that has been discussed above, present revision petition is dismissed. However, the personal appearance of the petitioner is exempted during the trial.

15-12-2016

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(RITU BAHRI)
JUDGE