

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

Crl. Rev. No.2925 of 2015

Date of Decision: 15.03.2016

Satvir Singh

....Petitioner

Versus

State of Haryana and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the 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. Vijay Sangwan, Advocate
for the petitioner.

Mr. Arun Kumar, A.A.G., Haryana
for the respondent-State.

None for respondent No.2, despite service.

DAYA CHAUDHARY, J.

The present revision petition has been filed to challenge the impugned order dated 14.07.2015 passed by the Additional Sessions Judge, Narnaul, whereby, the application moved by the petitioner under Section 319 Cr.P.C for summoning respondent No.2 was dismissed.

Briefly, the facts of the case are that FIR No.344 dated 12.11.2014 was registered under Sections 498-A/304-B/323/301/34 IPC at Police Station Kanina on the basis of statement made by complainant-petitioner Satvir Singh, wherein, it was mentioned that his daughter-Neetu was married with accused Pawan Kumar on 09.02.2014 and sufficient dowry was given at the time of marriage but his daughter was still harassed for bringing less dowry. A demand for car was raised by her in-laws. She

was also threatened to face consequences, in case, the car was not given. Thereafter, an information was received by the complainant on 12.11.2014 that his daughter Neetu was having severe pain in her stomach. On receiving the said information, the complainant, his brother and other respectables of the Village reached at the house of in-laws of Neetu and found that his daughter had already died. Therefore, the complaint was made to the police and on that basis, the FIR was registered against husband-Pawan Kumar, Shiv Kumar and Raj Kumar-brothers-in-law (jeth) and Mukesh Devi, mother-in-law of deceased-Neetu. Abovesaid three accused except her brother-in-law (*jeth*)-Shiv Kumar, were charge-sheeted for commission of offence punishable under Sections 498-A, 304-B, 323 and 201 IPC. Statement of complainant-petitioner was also recorded while appearing as PW-9, wherein, it was stated that accused-Shiv Kumar (respondent No.2) was also involved in the commission of offence along with other accused but challan was not presented against him. Thereafter, an application was moved by the petitioner under Section 319 Cr.P.C to summon respondent No.2 as an additional accused but the same was dismissed on 14.07.2015 by the Additional Sessions Judge, Narnaul, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that the impugned order passed by the Additional Sessions Judge, Narnaul is not based on proper appreciation of evidence available on record. The name of respondent No.2 was specifically mentioned in the FIR and specific allegations regarding giving of beatings to deceased-Neetu and demanding Swift Car from father of the deceased were also levelled against him. Even in the statement of complainant-petitioner Satvir Singh recorded while appearing as PW-9, there was specific mention of his role and involvement in the commission of offence but still the application has been dismissed.

Learned counsel also submits that similar allegations were there against other accused and they were challaned but respondent No.2 was found innocent by the Investigating Agency and was kept in column No.2.

Notice of motion in the case was issued on 13.08.2015. Reply on behalf of respondent-State has been filed in the Court today and the same is taken on record.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order dated 14.07.2015 passed by the Additional Sessions Judge, Narnaul as well as other documents available on the file.

Admittedly, the FIR, in question, was registered on the basis of statement made by the petitioner against husband, brothers-in-law and mother-in-law of his daughter (since deceased). During investigation conducted by the police, respondent No.2-Shiv Kumar was found innocent and was kept in column No.2. Statement of the complainant-petitioner was recorded before the Court while appearing as PW-9. Thereafter, an application was moved by the petitioner under Section 319 Cr.P.C for summoning respondent No.2 as an accused, which was dismissed on the ground that the public prosecutor had already examined nine witnesses including all material witnesses but no sufficient evidence has come on record to show that sufficient evidence is there to summon respondent No.2 as an accused to face trial along with other accused.

Section 319 Cr.P.C is relevant to resolve the present controversy and the same is reproduced 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 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., it is apparent that in case, during trial, it appears to the Court from the evidence that a person, who is sought to be summoned, has also committed an offence and could be tried together with the accused, who are already facing trial, then, he can also be summoned. The relevant words in the said Section are “it appears from the evidence””any person””has committed any offence”. No doubt, the power is there with the Summoning Court to summon additional accused but that power is to be exercised with caution, on being satisfied that some offence has been committed by such person and only when on the basis of evidence available on the file, it appears to the Court that such person has also committed an offence.

Same view has been taken by Hon’ble the Apex Court in cases ***Mohd. Shafi vs Mohd. Rafiq and another 2007(2) RCR (Criminal) 762, Municipal Corporation, Delhi vs Ram Krishan Rohtagi and others***

1983(1) RCR (Criminal) 73 and *Krishnappa vs State of Karnataka* 2004 (4) RCR (Criminal) 678.

The findings recorded by the trial Court in paras No.9 and 10 of the impugned order are reproduced as under:-

“9. From the entire evidence led by the prosecution, no case of murder is made out against the person sought to be summoned as additional accused. There exists no possibility that the accused so summoned in all likelihood would be convicted. Learned Public prosecutor has already examined nine witnesses. Since all the material witnesses have already been examined and nothing new has come in the Court file so that the accused Shiv Kumar may be summoned. Therefore, summoning of the aforesaid person under Section 319 Cr.P.C would entail recommencing the whole proceedings against the aforesaid persons and re-examining the witnesses already examined as prosecution has already examined as many as nine material witnesses.

10. In the instant case, on the quality of the evidence adduced by the prosecution so far as the accused sought to be summoned is concerned, it is difficult to hold with any amount of certainty that the same would in all probabilities secure a conviction against him. Thus, it would not be proper to subject the aforesaid person to trial by invoking the provisions of Section 319 Cr.P.C. The application thus stands dismissed.”

It has clearly been mentioned in the impugned order that nine material witnesses were examined but nothing came on record regarding involvement of respondent No.2 in the case. The role of respondent No.2 was already inquired/investigated into by the Investigating Agency and he was found innocent. There was no evidence on record before the Summoning Court to summon respondent No.2 as an additional accused and hence, the application moved by the prosecution under Section 319 Cr.P.C was dismissed.

In view of the facts as well as law position as discussed above, no interference is required in the impugned order and there is no merit in the contention raised by learned counsel for the petitioner that the evidence available on record was not properly appreciated. The present petition, being devoid of any merit, is hereby dismissed.

15.03.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE