

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

**Crl. Rev. No.2142 of 2016 (O&M)
Date of decision : 02.06.2016**

Gobind Ram

.....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present: Mr. Parveen Kumar Garg, Advocate
for the petitioner.**

ANITA CHAUDHRY, J.

This revision is directed against the order dated 13.05.2016, passed by Additional Sessions Judge, Fatehabad who dismissed the application filed under Section 319 Cr.P.C. The complainant was seeking summoning of the grand-father, brother in law and sister in law of the husband.

A complaint was given by Gobind Ram, upon which FIR No.171 was registered on 21.08.2015 under Sections 498-A, 304-B/34 IPC. His daughter Geeta was married to Satpal four years ago. The couple had a daughter who was two and a half years old. The complainant had alleged that his daughter's mother in law - Jeeto, husband - Satpal, unmarried brother in law - Dharma @ Dharampal, unmarried sister in law - Icharo Devi @ Reshma and grand father - Gamma Ram used to harass his daughter for bringing less dowry and for not getting a motorcycle and she was beaten a

number of times and was also thrown out of the house. Allegations were made that the complainant received information on 21.08.2015 from the uncle that Geeta was serious and they should reach Shakarpur at the earliest. The family reached village Shakarpur and found the body lying on the floor and there were marks on her neck. Allegations were made that Geeta had killed by all the five persons named by him.

In the postmortem report, a ligature mark around the neck above the level of thyroid was found and the second cervical vertebra was found to be dislocated. There was an abrasion with the swelling over the right side of the face below the right eye measuring 3cm x 0.5 cm. The cause of death was stated to be asphyxia due to hanging and the injuries were antemortem in nature.

The police investigated the case and filed the challan against the husband and the mother in law. The prosecution examined Gobind Ram, who made the same statement as made to the police and thereafter an application was moved for summoning the additional accused. It was pleaded that all the persons named by them were not challaned and were wrongly declared innocent by saying that Gamma Ram was very old whereas the brother in law & sister in law were studying. It was pleaded that Dharma and Icharo were in the age group of 20 – 21 years and should have been challaned and since the complainant had named them, there was substantive evidence against them.

In the reply filed by the accused it was pleaded that Gamma Ram was 76 years of age and was residing separately with the family of Satpal. They also appended the ration card. It was pleaded that Dharma had

passed his secondary examination in April, 2015 whereas the name of Reshma was struck off from the school on 27.08.2015 due to her long absence from school and the certificate was attached along with the reply.

The trial Court dismissed the application.

Section 319 Cr.P.C. reads as under:-

Section 319 Cr.P.C. 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.

In order to invoke the provisions of Section 319 Cr.P.C., the prosecution/complainant has to lead evidence to show that there were additional persons whose complicity may be indicated and connected with the commission of the offence. It is an enabling provision empowering the Court to take appropriate steps of proceeding against any person not being an accused for also having committed the offence under trial. The powers under Section 319 Cr.P.C. can be invoked only after the charges are framed and the stage of recording the evidence has reached. In *Hardeep Singh Vs.*

State of Punjab 2014(2) SCR 1, it has been held that the degree of satisfaction for summoning the additional accused has to be different. In the present case, the prosecution was not able to bring any additional material so as to enable the Court to summon the additional accused. The trial Court had observed that there was a tendency to involve all the relatives of the husband. It had noted that the grand father was old and was residing with the son for the last 15 years whereas the other two persons namely the younger brother and sister of the husband were small and were not involved in the incident.

The trial Court had rightly observed that the provisions of Section 319 could not be invoked only on mere allegations and because the witnesses were over zealous.

The Court cannot summon the additional accused only on the mere asking and that practice has always been discouraged. The complainant had made general allegations without giving any specific instances. I find no infirmity in the order.

The petition is dismissed.

02.06.2016
sunil

(ANITA CHAUDHRY)
JUDGE