

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRM-M No. 14582 of 2016 (O&M)

Date of decision : 19-05-2017

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Harvinder Singh and others

.....Petitioners

Versus

Surinder Singh @ Shinda and another

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Atul Lakhanpal, Senior Advocate with
Mr. R.S Chahal, Advocate for the petitioners.

Mr. A.P.S Gill, AAG, Punjab.

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RITU BAHRI, J.

Present petition has been filed under Section 482 Cr.P.C for quashing of Crl. Complaint Case No. 34/1/2013 instituted on 11.3.2013 titled as `Surinder Singh @ Shinda vs. Harvinder Singh and others under Sections 302, 304-B, 316, 34 of IPC (Annexure P-5) and summoning order dated 23.2.2016 (Annexure P-6) passed by Judicial Magistrate First Class, Nakodar.

FIR No. 136 dated 17.8.2012 under Sections 302, 34 IPC was registered at Police Station Shahkot, District Jalandhar (Annexure P-1) at the instance of petitioner no.2. After registration of FIR, statement was made by the complainant-respondent no.1 Surinder Singh that petitioner

no.1 had confessed before him of having murdered his wife i.e daughter of respondent no.1 and on the basis of this statement challan (Annexure P-2) was presented against him. During the pendency of the trial, the statement of respondent no.1 was recorded as PW-2 on 17.4.2015 (Annexure P-3). An application under Section 319 Cr.P.C was moved before the trial Court by respondent no.1 for summoning the petitioners and the other accused to which the petitioner no.1 has submitted his reply on 1.10.2015.

After eight months of the FIR, A criminal complaint (Annexure P-5) was filed. After recording preliminary evidence, petitioners have been ordered to be summoned vide order dated 23.2.2016 (Annexure P-6).

During the pendency of this petition, an application under Section 319 Cr.P.C has been decided and dismissed vide order dated 3.6.2016 (Annexure P-7).

On notice service of respondents was complete on 8.8.2016, however, no one has put in appearance on behalf of the respondents till date.

Counsel for the petitioner Mr. Atul Lakhanpal, Sr. Advocate has argued that statement of Surinder Singh as PW-2 has been made the basis of the complaint (Annexure P-5) for summoning the present petitioners in the trial. While dismissing the application under Section 319 (Annexure P-7), the trial Court has observed that in the statement made by Surinder Singh under Section 161 Cr.P.C, no allegation was levelled against Parmjit Singh, Baksho and Sarwan Singh. The names of these persons did not find mention during the investigation of the case and after a gap of around two years and eight months, Surinder Singh has named Paramjit Singh, Baksho and Sarwan Singh for the first time which is a clear improvement in his previous statement. No specific role has been attributed

to them with regard to the occurrence. This evidence is not sufficient to summon them as an additional accused.

A similar question has come up for consideration before the Supreme Court in the case of **Jile Singh vs. State of U.T and another, 2012 (1) RCR (Criminal) 583**, where in a murder case, the police had done the investigation and charge sheet had been submitted. After committing the case to the Sessions Court, father of the deceased filed a private complaint before CJM for summoning another person as he was figured in investigation. But, police did not file charge sheet against him. Magistrate after recording evidence summoned the said person. It was held by Hon'ble the Supreme Court that it was not open to the Chief Judicial Magistrate to exercise the power under Section 204(1)(b) of the Code and issue summons to the accused. It was further held that Once the Sessions Court takes cognizance of the offence pursuant to the committal order, the only other stage when the Court is empowered to add any other person to the array of the accused is after reaching evidence collection when powers under Section 319 of the Code can be invoked. In paragraph 9, the Supreme Court has observed as under:

“9. After going through the provisions of the Code of the Criminal Procedure and the aforesaid two judgments and on examining the order dated 10.6.1997 passed by the Magistrate, we have no hesitation to come to the conclusion that the Magistrate could not have issued process against those persons who may have been named in the FIR as accused persons but not charge

sheeted in the charge sheet that was filed by the police under Section 173 Criminal Procedure Code.”

In **Kishori Singh and others vs. State of Bihar and another 2004(13) SCC 11**, Hon'ble the Supreme Court came to the conclusion that the Magistrate could not have issued process against those persons who may have been named in the FIR as accused persons, but not charge sheeted in the charge sheet that was filed by the police under section 173 of Criminal Procedure Code. So far as those persons against whom charge sheet has not been filed they can be arrayed as “accused persons” in exercise of powers under Section 319, Criminal Procedure Code when some evidence or materials are brought on record in course of trial or they could also be arrayed as “accused persons” only when a reference is made either by the Magistrate while passing an order of commitment or by the learned Sessions Judge to the High Court and the High Court on examining the material, come to the conclusion that sufficient materials exist against them even though the police might not have filed charge sheet.

In the case of **Ranjit Singh vs. State of Punjab 1998(4) RCR (Criminal) 552**, the issue raised in that appeal was that whether Sessions Court can add a new person to the array of accused in a case pending before it at a stage prior to collecting any evidence? It was held that Sessions Judge has power under Section 319 Criminal Procedure Code to add new accused to face trial. Sessions Judge can do so after collecting evidence. Of Course, it is not necessary to wait till entire evidence is collected. Where, however, material placed by Investigating Agency shows positive involvement of accused but the accused was not arrayed due to

omission, Sessions Judge is required to send report to High Court and High Court in exercise of inherent/Revisional power would direct the committing Magistrate to rectify the committal order.

The ratio of the above said Supreme Court judgments is directly applicable to the facts of the present case. After registration of the FIR, the challan was presented against the husband and father in law and mother-in-law were kept in column no.2 and even the application under Section 319 Cr.P.C had been dismissed after passing reasoned order and examining evidence. By observing that no role was attributed to the accused who are sought to be summoned and that an improvement was made after a gap of two years, this Court is of the opinion that it would not be appropriate to summon them.

In view of all that has been discussed above, present petition is allowed and the order dated 23.2.2016 (Annexure P-6) is hereby set aside.

19.5.2017*ritu***(RITU BAHRI)
JUDGE**

Whether speaking/reasoned

Yes

Whether reportable

No