

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

**CRR No.2792 of 2013(O&M)
Date of Decision: 21.04.2017**

Kartar Singh

.....Petitioner

Versus

UT of Chandigarh

... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Mohit Garg, Advocate
for the petitioner.

Ms. Ashima Mor, APP, UT, Chandigarh.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 04.07.2013 passed by Sessions Judge, Chandigarh vide which the application under Section 319 Cr.P.C filed by the petitioner for summoning Harvinder Kaur @ Nancy as an additional accused was dismissed.

[2]. It has been alleged that the daughter of the petitioner committed suicide and in the suicide note left by the deceased, serious allegations have been made against Harvinder Kaur @ Nancy. The police in connivance with the accused has not presented the challan against the said Harvinder Kaur @ Nancy, although she was very much present in India at the time of incident.

[3]. Learned counsel for the petitioner vehemently submitted that as per contents of the suicide note, Harvinder

Kaur @ Nancy has been attributed with serious allegations by the deceased. The deceased had pleaded that Harvinder Kaur @ Nancy had entangled her in such a net that thereafter she could not understand anything about her life and future course of action. Harvinder Kaur @ Nancy was pleaded to be the reason for the death of the deceased and was labelled as a bad girl. In order to appreciate the contents of the alleged suicide note, it would be necessary to have a glance over the contents of the suicide note, which are reproduced hereasunder:-

“Today the reason of my death is Nancy, this girl has troubled me a lot in my life. I do not want to be a friend of this girl but this girl has harassed me a lot. This girl is very clever. She has entangled me in such a net that I am not able to understand anything in respect of my life that as to what I shall do. This girl is reason for my death. This girl is a very bad girl. This girl was having worst to worst relation with whom she was not married. If his mother or brothers considered that Mattu is telling lie then they can enquire this from the entire family and parents of the girl with whom she was to be married. That boy had told his parents and entire family members that he is having all the relations with Nancy which exist husband and wife. Her mother will come to know who says that we have no relation with that boy. The mother of Nancy will come to know and this Nancy was like this that despite of having all relations with that boy she used to talk a lot with other boys also. I have told to God that such type of girl shall not come in

anybody's fortune and this girl has entangled me in such a net that I cannot described. I am not finding any other way except to kill myself and today I am feeling that the truth has lost. I am not seen truth anywhere. This girl despite of such a bad is considered good amongst everybody. Today I am going to ask God that as to how world is created and the mother of Nancy is such a clever woman that despite knowing everything about her girl she used to say very bad about the other girls. When Nancy has gone to Canada then she used to say so much bad about her own girl Nancy that it is good that she has gone today the mother of Nancy and Nancy is reason for my death. Nancy and mother of Nancy is reason of my death. This is the last salute of my life God do not do such bad with any person as has been done with me and the person like Nancy shall not be brought in fortune. Oh God today I am coming to you and will ask from you that as to what it is in life. Any individual despite being correct is seen as wrong by everybody. Today this person has entangled me in her net in such a way that she says that motta I will never leave you in life, I will leave everything. Today that thing has happened in my life which I have never thought my dreams that I will be entangled myself while giving scope of others. I want to say to everybody that do not support anybody from your true heart. Do not spoil your life by following anybody. Today I want to say to everybody that do not think about anybody. Do not friendship with anybody. It is said that if you find good friend then your life will be made but if wrong friend is found then the entire life will be destroyed

today I have found a friend like Nancy who has destroyed my entire life. I will never forgive Nancy and her mother.

Nancy

Nancy”

[4]. The police investigated the case and could not collect sufficient material to file challan against the petitioner, rather challan was presented against Surinder Kaur. The petitioner appeared as PW 1 before the trial Court and relied upon the contents of the suicide note in order to allege complicity of Harvinder Kaur @ Nancy. Hardeep Singh son of the petitioner has also been examined as PW 2, who has also deposed in the context of suicide note.

[5]. After recording of aforesaid statements, petitioner ventured to file an application under Section 319 Cr.P.C for summoning Harvinder Kaur @ Nancy as an additional accused to face trial. After registration of the case, the police investigated the case and filed challan under Section 173 Cr.P.C. The investigating agency has not collected any material qua the complicity of Harvinder Kaur @ Nancy and therefore, challan was not presented against her. Harvinder Kaur @ Nancy was neither treated as an accused, nor considered to be a suspected accused by placing her name in column No.2 of the challan. Only Surinder Kaur was charge-sheeted and no

complaint was made by the complainant to the higher authorities in respect of alleged in-action on the part of the investigating agency. No process of the Court was invoked by way of getting the aforesaid Harvinder Kaur @ Nancy summoned in any manner. At the time of charge-sheeting the accused, the Court did not consider anything in respect of involvement of Harvinder Kaur @ Nancy on the basis of material collected by the investigating agency. The Court proceeded to frame charge against Surinder Kaur by considering *prima facie* material on record. In a way, no *prima facie* material came on record, which would have facilitated the Court to consider summoning and framing of charge against Harvinder Kaur @ Nancy prior to the stage under Section 319 Cr.P.C.

[6]. In **2014(1) RCR (Crl.) 623, Hardeep Singh v. State of Punja and others**, the Hon'ble Supreme Court summed up the conclusions and scope arising out of Section 319 Cr.P.C. The relevant conclusions summed up in para No.110, is as under:-

“110. We accordingly sum up our conclusions as follows:-

Question Nos.I & III

Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND

Q.III Whether the word “evidence” used in Section 319(1) Cr.P.C. has been used in a

comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C., and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused. Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the charge-sheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No.II

Q.II Whether the word “evidence” used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No.IV

Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? 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?

A. 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 in 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.

Question No.V

Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh.

The matters be placed before the appropriate Bench for final disposal in accordance with law explained hereinabove.”

[7]. Degree of satisfaction required under Section 319 Cr.P.C., is much more higher than the *prima facie* satisfaction at the time of summoning. The test that has to be applied is one which is more than *prima facie* case as required at the time of framing of charge

and just short of final conclusion. The scope of extent of powers of Court to summon any person as an accused during course of inquiry or trial in exercise of powers under Section 319 Cr.P.C., has been set at rest by the aforesaid **Hardeep Singh's** case (supra). The legal position has been summarised in para Nos.98 and 99 of the aforesaid judgment. For ready reference para Nos.98 and 99 of the said judgment are reproduced hereunder:-

“98. Power under Section 319 Cr.P.C., is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

99. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C., the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words “for

which such person could be tried together with the accused.” The words used are not ‘for which such person could be convicted’. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C., to form any opinion as to the guilt of the accused.”

[8]. Under Section 319 Cr.P.C, there should be a reasonable evidence for ultimate conviction and the material required for such opinion should be *prima facie* more than required for framing of charge and just short of ultimate conviction. When the Court did not consider even *prima facie* material for framing charge against Harvinder Kaur @ Nancy, then how the jurisdiction of the Court can be invoked at the stage of Section 319 Cr.P.C on the same material i.e. the alleged suicide note. The contents of suicide note cannot be improved by anyone by way of making any statement to explain accusation arising out of alleged suicide note viz-a-viz the complicity of Harvinder Kaur @ Nancy.

[9]. As per statement of Kartar Singh (PW 1) coupled with the material collected by the police at the first instance, it would be difficult to hold that there is sufficient material for presuming reasonable prospects of conviction of Harvinder Kaur @ Nancy, if not rebutted, it would lead to conviction. The investigating agency did not prefer to involve Harvinder Kaur @ Nancy in any manner. Even as per statement of Kartar Singh (PW 1), Harvinder Kaur @ Nancy was good friend of daughter

of complainant Gurpeet Kaur @ Mattu as per version recorded before the police, whereas in the statement recorded in the Court on 22.04.2013, the witness made an improvement in his examination-in-chief that his daughter was just known to Harvinder Kaur @ Nancy being a neighbour. The friendship of Harvinder Kaur @ Nancy with the deceased was denied. In his examination-in-chief, the witness has levelled allegations against Harvinder Kaur @ Nancy that his daughter told the complainant that she had visited the house of Harvinder Kaur @ Nancy and told her mother to make her understand not to roam with the boys. Gurpreet Kaur (deceased) could not elaborate before the complainant as to the actual reason for which she committed suicide. Since no such reasons could be brought on record, nor could have been elaborated by anyone, except the deceased, therefore, ingredients of offence under Section 306 IPC viz-a-viz Havinder Kaur @ Nancy cannot be presumed on the basis of material on record, which is not sufficient even to presume the existence of more than *prima facie* case for framing of charge against Harvinder Kaur @ Nancy.

[10]. In view of ratio laid down by the Hon'ble Apex Court in **Hardeep Singh's case (supra)**, I am of the view that no fault can be found in the impugned order dated 04.07.2013 passed by Sessions Judge, Chandigarh. This revision petition is

accordingly dismissed.

21.04.2017
prince

(RAJ MOHAN SINGH)
JUDGE

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No