

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

**CRR No.1986 of 2014
Date of Decision: 01.06.2017**

Kulvender

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present:- Mr.K.K.Saini, Advocate, for the petitioner.

Mr.D.R.Singla, DAG, Haryana.

Mr.Lovekirat S.Chahal, Advocate, for respondents No.2 to 4.

RITU BAHRI, J. (ORAL)

The petitioner has come up in revision against the order dated 04.04.2014 whereby, an application for summoning the accused Rohtas, Bala Devi-wife of Rohtas and Manju-daughter of Rohtas as additional accused has been dismissed.

The brief facts of the case are that Vinita-sister of the petitioner was married with accused Pardeep on 20.05.2013 and one month after the marriage, accused Pardeep and his family members started harassing her on account of demand of dowry. They repeatedly raised demand of a sum of Rs.10 Lacs and domestic articles. Vinita informed about this fact to her father Kartar Singh and brothers, but Kartar Singh was not in a position to fulfill their demand due to his financial condition. At this, father-in-law Rohtash, Manju-sister of the accused Pardeep and Bala his mother extending beatings to Vinita on daily basis. On 28.09.2013, Rohtash had made a call to the complainant intimating about the death of Vinita. The complainant

alleged that Vinita had been murdered by Pardeep in connivance with the parents and Bala and Sister Manju. A case under Section 304-B read with Section 34 of IPC was registered on the basis of complaint. An application Ex.PW1/B for getting post mortem of dead body of Vinita has also been filed. During investigation, accused Pardeep was arrested. The remaining persons named in the FIR were found to be innocent and they have been kept in column No.2 after completion of the necessary investigation. Challan has been filed under Section 173 Cr.P.C. in the Court against accused Pardeep. He was facing trial for the offence under Section 304-B IPC and alternatively under Section 302 IPC.

Notice of the application was given to the accused-Pardeep. He has filed his reply and has contested the application on the grounds that there was no evidence on record to connect the Rohtas, Bala and Manju alleged parents and sister of the accused Pardeep to the subject offences. The trial Court has mentioned the law laid down by Hon'ble the Supreme Court in case of **Sarabjit and anr. vs. State of Punjab, 2009 (34) RCR (Criminal), 388** whereby, it has been served that a person should be summoned under Section 319 Cr.P.C. as additional accused only when Court finds that evidence on record is such which would reasonably lead to conviction of person sought to be summoned and such powers can be exercised only on the basis of fresh evidence brought before it and not on the basis of material which has been collected during investigation. Further in **Ram Singh and Ors. vs. Ram Niwas & Anr. 2009(3) RCR (Criminal) 501**, it has been observed that the Court has to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, would lead to conviction of the persons sought to be added as accused in the case while

considering an application under Section 319 Cr.P.C.

By referring the judgment of Supreme court and this Court, the application has been dismissed by observing that there was no cogent evidence on record except repetition of allegations by Kulvender. As per allegation mentioned in the application Rohtash and Bala abovenamed are parents of accused Pardeep but as per reply filed by the accused, they were his maternal uncle and aunt, respectively. The copies of certificate issued in the name of accused-Pardeep showed that the name of parents of accused Pardeep are not the same as mentioned in this application. Even though, learned counsel for the complainant had placed on record a marriage invitation card of the deceased Vinita with accused Pardeep and in this invitation card, the name of father of accused Pardeep was mentioned as Rohtas Dahiya. However, from this card only it cannot be inferred that Rohtas Dahiya was father of accused Pardeep. Simultaneously, accused Pardeep had also placed photo copies of certain certificates issued in the name of Manju mentioning the name of her father as Ram Chander. It had asserted that Manju named in the FIR was married cousin sister of accused Pardeep and not the real sister of Pardeep. So it creates some suspicion about the involvement of the above named three persons and the same could not be taken place of proof and the trial Court dismissed the application.

Vide judgment dated 30.01.2015 passed by Additional Sessions Judge, Special Court, Sonapat, accused-Pardeep husband of the deceased has been convicted under Section 304-B IPC and he was sentenced to undergo rigorous imprisonment for 7 years.

The question on consideration before this Court that after the

whether the respondents can be summoned to face a trial. This aspect has been considered by this Court in the case of Tarsem Singh vs. State of Punjab and others 2013 (3)RCR (Criminal) 585. In this case, an application under Section 319 Cr.P.C. was dismissed on 06.04.2011 in the trial under Sections 302, 307 read with Section,34 IPC and Section 25 and 27 of Arms Act. The complainant filed a revision before this Court challenging the abovesaid order under Section 401 Cr.P.C.. During the pendency of the revision, the trial Court convicted and sentenced the main accused Milka Singh and Salinder Singh for imprisonment of life vide order dated 16.08.2012. On the same date, there was no order passed whereby, the additional accused had been sought to be summoned. The said revision was dismissed by observing as under:-

“As is evident from the record that in the instant case, the application filed by the complainant u/s 319 Cr.PC was dismissed by the trial Judge, vide impugned order (Annexure P1). That means, no order to summon the private respondents as additional accused was ever passed by the Court before conclusion of the trial of main case. Once, no such order for summoning the private respondents as additional accused was passed before the conclusion of the trial of main case, in that eventuality, the pointed observations in the above said judgment are not at all attracted to the facts of the present case, particularly when section 319 Cr.P.C posits that “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.” The words “in the course of trial” are most important and carry a significant meaning in this relevant connection. Therefore, the course (pendency) of the trial is a condition precedent, for summoning the additional accused u/s 319 Cr.PC and not otherwise. This matter is no more res integra and is now well settled.

An identical question came to be decided by this Court in CRR No.1882 of 2011 titled as “Rakesh Kumar Vs. State of Haryana & Ors.” decided on 4.10.2012. Taking into consideration the essential ingredients of section 319 Cr.PC, it was ruled that no person can legally be summoned as an additional accused to face the trial along with other co-accused under this section after the conclusion of the trial of main case. Thus, the contrary contentions of learned counsel for petitioner complainant “stricto sensu” deserve to be and are hereby repelled under the present set of circumstances as the ratio of law laid down in Rakesh Kumar's case (supra) “mutatis mutandis” is applicable to the facts of this case and is the complete answer to the problem in hand.”

The ratio of the abovesaid judgment directly applies to the present case and the application 319 Cr.P.C. had been dismissed on 04.04.2014 and the judgment of conviction was passed on 30.01.2015. As such, no ground is made out to summon the additional accused in a trial which has been concluded. Moreover, the trial Court has convicted the accused after recording the cogent grounds and valid reasons. In the impugned order the learned trial court has dismissed the application under Section 319 Cr.P.C.

real parents of the accused and even Manju is not real sister of accused Pardeep. This order has been recorded after giving cogent and valid reasons and cannot be interfered in exercise of its limited jurisdiction as per Section 319 Cr.P.C.

So in the light of the discussion, the orders of the Court below do not reflect any material irregularity or perversity which warrant interference. Hence the present revision stands dismissed.

(RITU BAHRI)
JUDGE

01.06.2017
anil

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No