

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

CRR-1742 of 2016(O&M)
Date of decision: 13.7.2017

Roshan Lal and another

...Petitioners

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Anshul Mangla, Advocate
for the petitioners.

Ms. Safia Gupta, AAG, Haryana.

H.S. MADAAN, J.

This revision petition is directed against the order dated 24.2.2016 passed by the Court of learned Additional Sessions Judge, Yamuna Nagar at Jagadhri vide which he had summoned petitioners – Roshan Lal and Mahinder Singh under Section 319 Cr.P.C. to face trial along with the accused already facing trial.

Such petitioners – Roshan Lal and Mahinder Singh prayed that the revision petition be accepted, the impugned order as well as subsequent proceedings be set aside.

Briefly stated, facts of the case as per prosecution story are

that FIR No.117 dated 25.7.2015 for the offences under Sections 306/34 IPC was registered with Police Station Khizrabad on the basis of statement of complainant – Anil Kumar, who had stated therein that his father Samay Singh, aged about 50 years was engaged in avocation of agriculture; that on 24.7.2015, his father Samay Singh told him that a woman belonging to village Nainawali had submitted a false complaint against him at Police Station Khizrabad pursuant to a conspiracy; that he had approached Som Nath and Hans Raj of village Nainawali besides Mahinder Singh for settlement of the matter but they rather threatened him stating that they would not do so and he (Samay Singh) would be sent to jail; that at about 2:00 p.m. Samay Singh consumed some poisonous substance due to harassment by abovesaid three persons. Samay Singh became unconscious and froth was coming from his mouth. He was shifted to Sharma Hospital, Jagadhri, where he died on 24.7.2015 in the evening. A writing was recovered from the pocket of his pant. During the course of investigation, involvement of Som Nath and Hans Raj in the incident was found and they were challaned for offence under Section 306 IPC whereas Roshan Lal was found to be innocent. However, Mahinder Singh could not be arrested and it was mentioned in the report under Section 173 Cr.P.C. filed in the Court that supplementary challan against Mahender Singh would be submitted in due course.

On filing of challan in the Court, formal charge was framed against Som Nath and Hanraj and trial against them proceeded. Statements of various witnesses were recorded. Complainant Anil Kumar appeared as PW6 and deposed stated that he had met the police on

25.7.2015 and made statement Ex.PF handing over suicide note Ex.PG to the police. Thereafter, the prosecution moved an application under Section 319 Cr.P.C. for summoning Roshan Lal as an additional accused after recording examination-in-chief of complainant Anil Kumar (PW6). Then supplementary final report was received in the Court to the effect that Mahinder Singh had been declared innocent by the police. Then the prosecution moved another application under Section 319 Cr.P.C. to summon Mahinder Singh. Both the applications were accepted by the trial Court vide order dated 24.2.2016 and Roshan Lal and Mahinder Singh were ordered to be summoned as additional accused.

Roshan Lal and Mahinder Singh knocked at the door of this Court by way of filing the present petition.

Notice of the petition was issued to the respondent – State and counsel representing the State put in appearance.

I have heard learned counsel for the parties besides going through the record.

At the very outset, it needs to be mentioned here that on being summoned by the trial Court, both the petitioners had put in appearance there, fresh charge was framed against accused Som Nath as well as accused Hans Raj, Roshan Lal and Mahinder Singh for the offence under Section 306 IPC on 27.4.2016 and then case was adjourned for prosecution evidence. The prosecution concluded its evidence on 26.7.2016. It is stated that statements of accused have also been recorded under Section 313 Cr.P.C. and now the case is fixed for defence evidence of the accused. It being so when the trial is almost complete, the revision

petition has more or less become infructuous. During the trial, it would be determined as to whether the petitioners have committed any offence or are innocent. The principles to determine guilt of an accused are very strict inasmuch as the prosecution is required to prove its charge against the accused beyond a shadow of reasonable doubt with benefit of doubt going to the accused. For that very reason, the instant petition is bound to fail. However, on merits also, the petition cannot succeed for various reasons.

Firstly, in the FIR which was recorded on the basis of statement of Anil Kumar (PW6) son of deceased Samay Singh, names of Som Nath and Hans Raj and Mahinder Singh are clearly mentioned being responsible for death of Samay Singh. In the suicide note Ex.PG said to have been recovered from the pocket of pant of deceased, which as per report of FSL was in hand of deceased Samay Singh, the names of Som Nath Nainawali, Hans Raj, Shen Lal Bahupurwala and Mohinder Sapoliawala being responsible for death of Samay Singh are mentioned. The trial Court in the impugned order has dealt with all the aspects at length including name of Roshan Lal mentioned as Shen Lal of Bahupurwala instead of Roshan Lal, resident of village Bahadurpur and name of Mahinder resident of Sapoliawala to be resident of Rapoliawala adding that the deviance in the names would be appreciated at the time of final arguments.

Then complainant Anil Kumar while getting his statement recorded during the trial as PW6 had stated that on 24.7.2015 at about 2:00 p.m., he has seen his father vomiting and froth was coming from his

mouth. On being asked, his father told him that feeling harassed by the conduct of four persons namely Som Nath, Hans Raj, Roshan Lal and Mahinder, he had consumed some poisonous substance; that they had compelled him to consume poison. The trial Court has relied upon such deposition of complainant in the Court as well as suicide note of the deceased while allowing applications under Section 319 Cr.P.C. so as to summon Roshan Lal and Mahinder Singh as additional accused to face trial along with two accused who had been challaned. Therefore, the trial Court was justified in passing that order and no illegality and infirmity can be found therewith.

As regards the authority referred to by learned counsel for the petitioners titled **Anita Versus Onkar and others**, by a Single Bench of this Court, that had different facts, where application under Section 319 Cr.P.C filed by complainant for summoning accused had been declined by the trial Court. The police had conducted investigation before filing charge-sheet but nothing incriminating came against accused persons. It was for that reason, the order was not interfered with. Here in the instant case, the trial Court has passed the impugned summoning order taking in view all the facts and circumstances considering the deposition of complainant in the Court naming petitioners Roshan Lal and Mahinder Singh as culprits on the basis of what was told to him by his father Samay Singh – deceased after consuming poison which could be construed as an oral dying declaration also. Coupled with that the mentioning of names of the petitioners in the suicide note, though some fault being there in the writing of names and addresses. The investigation carried out by the

police cannot override the observations made by the Court of Sessions on the basis of evidence recorded during the trial. Therefore, this authority does not help the petitioners in any manner.

As regards the second citation, **Babubhai Bhimabhai Bokhiria and another Versus State of Gujarat and others, 2014 CrL Law Journal 2290**, wherein Hon'ble Apex Court while dealing with scope of Section 319 Cr.P.C. for summoning of a person as additional accused had observed that a person be summoned only where strong and cogent evidence occurs against the person from the evidence led before the Court. Another test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge. There is no dispute with such proposition of law. As already observed, the trial Court has taken into consideration the oral as well as documentary evidence which can certainly be taken to be cogent, convincing and reliable. Furthermore, in the authority under reference, the Court had dealt with the topic of dying declaration.

Learned counsel for the petitioners tried to argue that the suicide note cannot be taken to dying declaration, as such cannot be relied upon.

I do not find much force in this contention. The admissibility and credibility of dying declaration cannot be downplayed in such a manner more particularly when as a result of comparison of the handwriting in the suicide note with admitted handwriting of the deceased. A report has been received in the case from FSL regarding similarities in the two writings. Thus, the suicide note is quite relevant and

valuable piece of evidence.

As regards next authority referred by learned counsel for the petitioners *Sushil Soni Versus State of Haryana and others, 2016(3) R.C.R.(Criminal) 793* by a Single Bench of this Court, wherein it was observed that a small suspicion or doubt is not sufficient to summon a person as an additional accused under Section 319 Cr.P.C. However, in this case positive incriminating evidence warranting summoning of Roshan Lal and Mahinder Singh under Section 319 Cr.P.C. was there and it is not a case of small suspicion or doubt making basis for summoning of such accused as additional accused. Therefore, this authority does not come to rescue of petitioners.

In view of the above discussion, no infirmity or illegality in the impugned order is found to be there which might have warranted interference by this Court while exercising powers under Section 401 Cr.P.C. Resultantly, the revision petition stands dismissed.

Copy of the order be sent to the trial Court for information and necessary action.

13.7.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No