

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

Crl. Revision No. 4039 of 2015(O&M)

Date of Decision: 07.07.2017

Virender Saini

.. Petitioner

Vs.

State of Haryana & Anr.

.. Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. R.K. Mathur, Advocate
for the petitioner.**

Ms. Dimple Jain, AAG Haryana.

**Mr. R.S. Budhwar, Advocate
for respondent No.2.**

ANITA CHAUDHRY, J.

This is complainant's revision against the order dated 19.08.2015 passed by the Additional Sessions Judge, Jagadhri dismissing the application preferred under Section 319 Cr.P.C. for summoning of Roshan Lal as an additional accused.

FIR No. 218 dated 19.04.2015 was registered at Police Station City Jagadhri under Section 302 read with Section 34 IPC on a statement made by petitioner Virender Saini, his sister Savita was married to Amar Nath son of Roshan Lal six years ago. They had two daughters. On 18.04.2015 he received a call from Roshan Lal that Savita had suffered a heart attack. On reaching the matrimonial home of Savita, they found her dead body lying in the room. There were marks on the neck. He suspected

that she had been murdered by her husband and father-in-law because she was earlier harassed by her husband.

The case was investigated. The investigating agency found Roshan Lal innocent and filed challan against Amar Nath under Section 306 IPC.

It is apt to mention here that at the trial Virender, the complainant appeared and his examination-in-chief was recorded. Thereafter, an application under Section 319 Cr.P.C. seeking summoning of Roshan Lal as additional accused was filed. The same was dismissed. Dissatisfied with the same, present revision petition has been filed by the complainant.

I have heard learned counsel for the parties and have perused the paper-book carefully.

The counsel contends that despite assigning specific role to Roshan Lal in the FIR as well as in the statement before the Court, the trial Court has erred in dismissing the application by observing that the trial is about to conclude. He submits that the father-in-law was present in the house when Savita died and he was harassing the girl and the medical evidence proves the complicity of Roshan Lal. It was urged that the police was hand in glove with the accused and Roshan Lal had wrongly been let off. Reliance has been placed on **Balram Prasad Agrawal Vs. State of Bihar & Ors. 1997(9) SCC 338**, **State of Karnataka Vs. K. Gopalakrishna 2005(9) SCC 291**, **Hardeep Singh Vs. State of Punjab & Ors. 2014(3) SCC 92** and **Razak Vs. State of Haryana & Ors. 2016(1) Law Herald 409**.

On the other hand, learned State counsel does not dispute that Roshan Lal was found innocent during investigation.

Learned counsel for respondent No.2 supported the impugned order.

In Hardeep Singh Vs. State of Punjab & Ors. 2014(3) SCC 92, Hon'ble Apex Court deliberated the issue of exercise of powers under Section 319 Cr.P.C. While dealing with the question as to the degree of satisfaction required for invoking the power under Section 319 Cr.P.C., plethora of judgments were taken into account and observed as under:-

98. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary 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.”

In *Krishnappa v. State of Karnataka*, 2004 (4) RCR (Criminal) 678, the Court ruled that the power to summon an accused is an extraordinary power conferred on the Court and it should be used very sparingly and only if compelling reasons exist for taking cognizance against the person other than the accused.

The Apex Court in *Sarabjit Singh and another v. State of Punjab and another* reported as 2009(3) RCR (Criminal) 388 observed as follows:-

“17. The provision of Section 319 of the Code, on a plain reading, provides that such an extraordinary case has been made out must appear to the court. Has the criterion laid down by this Court in *Municipal Corporation of Delhi (supra)* been satisfied is the question? Indisputably, before an additional accused can be summoned for standing trial, the nature of the evidence should be such which would make out grounds for exercise of extraordinary power. The materials brought before the court must also be such which would satisfy the court that it is one of those cases where its jurisdiction should be exercised sparingly. We may notice that in *Y. Saraba Reddy v. Puthur Rami Reddy and Anr.* [JT 2007 (6) SC 460], this Court opined:

"...Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates that evidence of witnesses given in Court..."

Similar view has been reiterated in the cases of **Asha Rani Vs. State of Punjab 2014(7) RCR(Crl.) 238, Suman Ashok Kumar Vs. State of Punjab 2012(4) CCR 115, Dalpreet Singh & Ors. Vs. State of Punjab & Ors. 2012(6) RCR(Crl.) 2315 and Sukkhu Raidas & Ors. Vs. State of U.P. & Anr. 2011(6) RCR(Crl.) 2582.**

It is apparent that for the purpose of forming an opinion to summon a person as an additional accused, the Court must be satisfied that there exists an extra ordinary case for exercise of power. The case in hands needs to be analyzed in view of the law laid down, referred to above.

A perusal of the allegations in the FIR itself shows that there is nothing specific against Roshan Lal, except the suspicion that his sister had been done to death by husband Amar Nath and father Roshan Lal on being harassed. In the next breath, in the FIR, the complainant disclosed that his sister was harassed by husband Amar Nath. No overt act had been attributed to Roshan Lal. Nothing was mentioned as to what was the reason or cause for harassment by Roshan Lal. The complainant made improvements while stepping in the witness box regarding involvement of Roshan Lal by stating that he had been harassing the deceased since long and he along with his son had hanged the deceased. No complaint was earlier made against Roshan Lal. The factual aspect of the matter was carefully analyzed and the statement of complainant was minutely examined by the trial Court while rejecting the application under Section 319 Cr.P.C. and it was held as follows:-

“6. The present case was earlier registered under section 302 read with section 34 IPC against the husband and father-in-law (Roshan Lal) of the deceased. According to the complaint itself as well as case of the

prosecution, the marriage between the deceased and accused Amar Nath had taken place about six years back. They were blessed with two daughters. There are allegations that the husband of the deceased used to harass the sister of the complainant i.e. deceased in this case. There are, however, no allegations that the deceased was being harassed or maltreated on account of any demand of dowry. As per initial version of the complainant, on 18.4.2015, he had received a telephonic message from Roshan Lal (now sought to be summoned as additional accused) that Savita (since deceased) had suffered a heart attack and on receipt of the said information, the complainant along with his other family members reached at the matrimonial house of his sister where they found her lying dead and that they also found some mark on her neck and he reported to the police that his sister has been killed by her husband and father-in-law since husband of the deceased was habitual to harass her earlier also. This was the initial version of the complainant made before the police on the basis of which the instant case was registered wherein there is no allegation that the person now desired to be summoned as additional accused had ever harassed or maltreated the sister of the complainant. If this version of the complainant is taken into consideration it has not come that Roshan Lal, father of accused Amar Nath also harassed the deceased on an earlier occasion. Meaning thereby that there are no specific allegation as to what was the role the father-in-law of the deceased who is desired to be summoned as additional accused had to pay in the commission of the crime. Moreover, in his statement before the court during trial, he has improved his version while stating that both i.e. accused Amar Nath as well as the said Roshan Lal were harassing the deceased since long. As it is, it is evident from the record

*that the during investigation the police had found the said Roshan Lal to be innocent and thus, he was not challaned by the police. Thus, while considering the fact that the complainant has improved his version during his deposition before the court and the position of law as per the view taken in the case of **Hardeep Singh Vs. State of Punjab** (supra) that there is a difference in the degree of satisfaction for summoning the original accused and a subsequent accused which is on account of the fact that trial may have already commenced against the original accused and it is in such a stage of trial that materials are disclosed against a newly summoned accused. Fresh summoning of accused will result in delay of the trial and therefore, degree of satisfaction for summoning the original accused and the subsequent accused has to be different. Certainly, power under section 319 Cr.P.C. is a discretionary and extra ordinary power and it has to be exercised sparingly and judiciously. Thus, considering the settled position of law where the Courts should use the discretion granted to it by virtue of Section 319 Cr.P.C. in a sparing manner and only when if there are compelling reasons to take cognizance against the other person against whom it is alleged that action has not taken. There must be substantial evidence on record to summon any another person as additional accused. For that there must be more convincing or cogent material on record. It is also not unknown that in such type of cases where matrimonial disputes are involved, all the member of in-laws' family are roped in to put pressure. Thus, considering the fact that the said person, namely, Roshan Lal was found innocent during the course of investigation, there is no legal evidence apparent on the record from which it appears that the above named person has participated in the commission of the offence or that it is required that he should also be*

tried along with the accused, who is already facing trial. Thus, there are no compelling reasons at this stage as per record for taking cognizance against namely, Roshan Lal son of Telu Ram, resident of House No. 569, Jessco Colony, Jagadhri, District Yamuna Nagar.”

. It is a well settled proposition of law that an order under Section 319 Cr.P.C. should not be passed only because the first informant wishes to implicate some more persons. The Courts are required to apply the stringent tests, one of the tests is that the Court should come to a reasonable conclusion on the basis of evidence before it that the same is likely to lead to conviction. There is a general tendency to rope in all the family members of the husband in such like cases and mere ipse dixit would not serve the purpose. The powers under Section 319 Cr.P.C., have to be exercised sparingly and only if compelling reasons exists for taking cognizance against the person other than the accused. There is no scope of interference. The petitioner cannot derive any help from the case law referred to above which are distinguishable on facts.

The petition is dismissed.

July 07, 2017
Jiten

(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No