

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

CRR-4549-2015(O&M)

Date of decision: 30.10.2017

Smt.Kalawati

...Petitioner

Versus

Phool Kumar and others

...Respondents

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

Present: Mr.B.Kaushik, Advocate
for the petitioner.

Mr.Naresh Kumar, Advocate
for respondent No.1.

Mr.V.K. Jindal, Senior Advocate with
Ms.Janya Sirohi, Advocate
for the respondent No.2.

Mr.Neeraj Poswal, AAG, Haryana
for respondent No.3.

H.S. MADAAN, J.

This revision petition is directed against the order dated
16.9.2015 passed by the Court of learned Additional Sessions Judge,
Kurukshetra vide which he had dismissed an application under Section
319 Cr.P.C. for summoning Phool Kumar and Ravi as additional accused

for facing trial in the complaint case along with Vikram Singh and Manjeet Singh.

Briefly stated, the facts of the case are that complainant Smt.Kalawati had filed a complaint against four persons, namely, Phool Kumar, Ravi, Vikram Singh and Manjeet for offences under Sections 328, 302/34 IPC for causing death of her son Satish Kumar stating therein that Ranbir Singh, husband of the complainant Smt.Kalawati had submitted a complaint dated 16.9.2009 to the police, which formed basis for registration of FIR No.199 dated 23.9.1999 for the offences under Sections 328, 302, 34 IPC registered with Police Station Kurukshetra, however, the police intentionally did not investigate the case properly. Facts of the incident as given are that son of the complainant Smt.Kalawati and Sh.Ranbir Singh, namely Satish Kumar was studying in B.Tech course in Shri Krishna Institute Engineering College at Kurukshetra; that he was residing in a rented house bearing No.680, Sector 13, Kurukshetra; that Vikram Singh and Manjeet Singh were also residing with him; that on 27.6.2009, Ranbir Singh talked with his son Satish Kumar on mobile phone and Satish Kumar told him that accused Vikram Singh and Manjeet Singh always quarreled with him, so he wanted to live separately from them; that on 28.6.2009 at about 8:16 p.m., accused Vikram Singh gave a call on mobile phone of Ranbir Singh and the latter asked from him regarding the health of his son Satish Kumar, to which he replied that Satish Kumar had gone to the market and would return within a few minutes; that at about 8:42 p.m. on that very day, Ranbir Singh again gave a call on the mobile phone of Satish Kumar

bearing No.94169—27019, which was attended to by accused Vikram Singh, who stated that Satish Kumar had drowned in the river/canal and when Ranbir Singh inquired from him the reason of such drowning, the mobile phone was disconnected by accused Vikram Singh, however, later on mobile phone of deceased Satish Kumar was used by accused Vikram Singh and Manjeet Singh; that Vikram Singh and Manjeet Singh had not informed the police, college authorities regarding the incident; that proceedings under Section 174 Cr.P.C. had been conducted by the police and it was found that deceased Satish Kumar had sustained multiple injuries; that subsequently Ranbir Singh came to know that on 28.6.2009, accused had taken Satish Kumar for the purpose of having bath in the river/canal, where they in furtherance of their common intention firstly gave beatings to Satish Kumar and thereafter giving him intoxicant threw him in the river with intention to kill him; that body of Satish Kumar was recovered from the river and was sent for post-mortem examination on 1.7.2009; that the doctor observed that there were multiple abrasions on various parts of the body, hands, both ears and forehead of deceased Satish Kumar; that photographs of the dead body of Satish Kumar shows that his two frontal teeth had been broken and there was strangulation mark on his neck; that the police had received the FSL report with following result:

- (i) An organo phosphorous pesticide and ethyl alcohol were detected in 1a and 1b.
- (ii) Exhibit 1c (blood) was found to contain the ethyl alcohol in the strength of 126.5 mg%.

(iii) No common poison could be detected in exhibits – 1d.

That after receipt of FSL Report, FIR No.199 dated 23.9.2009 for the offences under Sections 328, 302/34 was registered; that on 13.7.2009, Ranbir Singh had submitted a complaint to the higher police officers alleging that death of his son was caused by the accused persons by drowning him in the river and by giving beatings to him and also giving poisonous substance to him; that accordingly an inquiry was conducted by CIA Staff, Kurukshetra, however, allegations in the complaint were not found to be correct. Nevertheless viscera report was ordered to be awaited to ascertain the cause of death of Satish Kumar. During the investigation of the case, another opinion of the doctor, who conducted the post mortem of Satish Kumar was obtained by the police and the doctor again confirmed their earlier opinion that the death of Satish Kumar was caused due to ASPHYXIA due to drowning which was ante-mortem in nature and was sufficient to cause death in the ordinary course of nature. Thereafter, Superintendent of Police, Kurukshetra wrote a letter to Director FSL, Madhuban to re-examine the viscera in order to ascertain the exact cause of death of Satish Kumar since the quantity of pesticide was not mentioned having been found in Ex.1a and 1b in the FSL report. A Board of doctors (experts) re-examined the viscera and blood sample of deceased and gave opinion as DIATOMS could not be detected in Ex.1C. And ethyl alcohol was detected in Ex.1a, 1b, 1c. Ex.1c was found to contain ethyl alcohol in strength of 23 mg%. Even after receipt of the report of re-examination of viscera of deceased Satish Kumar from FLS, Madhuban, again the opinion of the team of doctors

was sought by police for clarification on the following points:

- a) Whether the injuries found over the dead body could be sustained in drowning in the canal?
- b) Whether death could be caused by the injuries found over the dead body?

Responding to such queries, the team of the doctors opined that possibility of the injuries mentioned in the post-mortem report No.287/09 occurring as a result of flow of body in flowing water could not be ruled out. The injuries were superficial abrasions, small lacerated wound (in numbers) and do not involve any vital organ, those could not be held responsible for causing death.

The complainant has alleged that the police wanted to save the accused persons from punishment and the investigation so carried out by the police was tainted and biased.

After recording preliminary evidence, learned Judicial Magistrate Ist Class, Kurukshetra had summoned Vikram Singh and Manjeet Singh to face trial though complaint qua Phool Kumar and Ravi was dismissed. Learned Judicial Magistrate Ist Class, Kurukshetra had committed the case to the Court of Sessions. The case was assigned to the Court of learned Additional Sessions Judge, Kurukshetra, where the trial began.

After examination of two witnesses, the complainant moved an application under Section 319 Cr.P.C. for summoning of Phool Kumar and Ravi as additional accused, which was dismissed by learned Additional Sessions Judge, vide order dated 16.9.2015.

Feeling aggrieved, the petitioner has approached this Court by way of filing present petition.

Notice of the petition was issued to the respondents and they appeared through counsel.

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

Section 319 deals with power of the Court to proceed against other persons appearing to be guilty of offence. It provides 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 law on the subject has been crystallized in landmark authority **Hardeep Singh Versus State of Punjab and others, 2014(3) SCC 92** by Constitutional Bench of Hon'ble Supreme Court. In para No.99, Hon'ble Apex Court has dealt with the degree of satisfaction of the Court required for summoning of additional accused, which reads as under:

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.

The trial Court by a well reasoned order has dismissed the application. The reasoning given and operative part of the order reads as follows:

Perusal of the case file reveals that earlier on a complaint so moved by Ranbir Singh, husband of the complainant Smt.Kalawati before the concerned police, FIR bearing No.199 dated 23.9.1999, under Sections 302, 328 IPC read with Section 34 IPC was registered at Police Station, Kurukshetra University, Kurukshetra against the accused persons and after investigation, the said case was found false by the concerned police and cancellation report was thus submitted. Thereafter, as per the orders passed by the Hon'ble High Court of Punjab & Haryana at Chandigarh, the said case

was re-investigated into the Special Investigation Team of Chandigarh Police but again the police found the accused persons innocent and submitted cancellation report.

The complainant Smt.Kalawati then filed the instant complaint against four persons, out of whom only two persons namely Vikram Singh and Manjeet Singh were summoned by the learned Magistrate, whereas remaining two persons namely Phool Kumar and Ravi, who are now sought to be summoned by way of the instant application as an additional accused, were not summoned as there was no prima facie case found against them. Statements of the complainant as well as other witnesses so got recorded by them before the learned Magistrate in the preliminary evidence of the case regarding the summoning of said Phool Kumar and Ravi have already been considered by the learned Magistrate and when no prima-facie case was found against them then they were not summoned and the said summoning order has now become final. If the complainant was not satisfied with the said summoning order passed by the learned Magistrate, then she could have well challenged the said order before the Appellate Court but this option was not exercised by the complainant at the relevant time.

One another aspect of the case which is required to be noticed is that in the DDR No.4 dated 29.6.2009, Police Post IIIrd Gate, Kurukshetra, the husband of the complainant

Ranbir Singh, who was working as EASI in the Haryana Police at Hisar, claimed the death of his son Satish Kumar to be an accident. Admittedly, power under Section 319 Cr.P.C. is an extraordinary power to be exercised very sparingly and only if compelling circumstances and reasons are there for taking cognizance against other persons who are sought to be summoned. The said power is to be exercised judiciously, only in case some fresh evidence is there which has come into light during the course of inquiry or trial of the offence and the Court is satisfied that such person has committed any offence for which he can be tried with the other accused. In case titled **Michael Machado and another Versus Central Bureau of Investigation and another 2000(2) Crimes 23(SC)**, it has been observed by the Hon'ble Supreme Court of India that:-

The court while deciding whether to invoke the power under [Section 319](#) of the Code, must address itself about the other constraints imposed by the first limb of sub- section (4), that proceedings in respect of newly added persons shall be commenced afresh and the witnesses re- examined. The whole proceedings must be re-commenced from the beginning of the trial, summon the witnesses once again and examine them and cross-examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are quite a large in number the court must

seriously consider whether the objects sought to be achieved by such exercise is worth wasting the whole labour already undertaken. Unless the court is hopeful that there is reasonable prospect of the case as against the newly brought accused ending in conviction of the offence concerned we would say that the court should refrain from adopting such a course of action.

After hearing the rival contentions, I find that law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no inference with such judgment is to be done.

Thus, I do not find any illegality or infirmity in the impugned order much less apparent on the face of it or the order being perverse having been passed in violation of several principles of criminal jurisprudence. Resultantly, the revision petition stands dismissed.

30.10.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No