

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

Crl. Rev. No.925 of 2017

Date of Decision : April 3, 2017

Pardeep Kumar..... Petitioner

VERSUS

State of Haryana and others..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

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Present: Mr. Parminder Singh, Advocate
for the petitioner.

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LISA GILL, J. (Oral)

The petitioner prays for setting aside order dated 15.2.2017 passed by the learned Additional Sessions Judge, Kaithal, whereby the application under Section 319 Cr.P.C. for summoning respondents No.2 to 5 as additional accused has been dismissed. The petitioner is the complainant in FIR No. 147 dated 28.9.2015 under Sections 498A, 304B, 120B read with Section 34 IPC registered at Police Station Sadar, Kaithal.

Learned counsel for the petitioner vehemently argues that there is sufficient evidence on record for summoning the said respondents as additional accused in this case. The said respondents have been specifically named in the FIR by the complainant. Furthermore, there is a suicide note (Annexure P2) which is proved to be in the hand of the deceased. The

names of respondents No. 2 to 5 are mentioned in the said suicide note. Therefore, the learned trial Court has grossly erred in dismissing the application under Section 319 Cr. P.C. and not summoning respondents No. 2 to 5 as additional accused to face trial along with the co-accused Sunil, husband of the deceased, Kamla-mother-in-law of the deceased and Ravi-brother-in-law of the deceased. It is prayed that this petition be allowed and the above said respondents be summoned as additional accused to face trial.

I have heard the learned counsel and have gone through the file with his assistance.

The learned trial Court while considering the facts and circumstances of the case has observed as under:-

“It also needs to be pointed out here that no document has been brought on the case file, from where it can be inferred that persons sought to be summoned as co-accused were actually residing in the matrimonial home of the deceased and then they used to interfere in day to day life of deceased or had great persuasive power over the accused already facing trial. Worth mentioning here would be the fact that on the request made by the complainant, the matter was investigated again and it was found by the police authorities that ₹2 lacs had been given by the complainant to Sunil (accused No.1) not to buy car but as a loan as he (accused No.1) needed money for constructing his house. Moreover, it also came to notice of Investigating Officer that on the day the tragic incident occurred on 27.09.2015, an altercation had taken place between Sunil son of Inder and Ravi son of Inder, (both facing trial as accused) and to sort out the

dispute between the brothers, deceased rushed to house of Siri Kour wife of Krishan (sought to be summoned as accused), had requested her to come to the matrimonial home and to sort out the dispute between Sunil and Ravi, which at this stage at least suggest that she had faith in elderly lady. It also came during the investigation, Siri Kour, wife of Krishan, Deepu son of Krishan, Anil son of Krishan, Krishan, son of Kura Ram and Pawan son of Bija, all residents of village Mago Majri, District Kaithal, were found to be innocent by investigating agency of the State. Furthermore, simply because their names appeared in an undated note penned down by deceased, in which name of husband of deceased had been scored and only one line was mentioned that the persons named in the note would be responsible for her death, would be no ground to draw the conclusion that persons sought to be summoned as accused played a constructive role in the commission of offence.”

As per the FIR general allegations have been levelled against the 'in-laws family' of the deceased by the complainant (brother of the deceased). Specific allegations have been raised against the accused Sunil (husband of deceased), Kamla (mother-in-law of deceased) and Ravi (brother-in-law of deceased). They are admittedly facing trial in this case. It is alleged that respondents No. 2 to 5 colluded with the co-accused who are facing trial and murdered the complainant's sister due to non-fulfillment of the demand of dowry. It is further alleged that they instigated the three accused facing trial to demand dowry. As per the application under Section 319 Cr. P.C. (Annexure P3), it is averred that the deceased's husband

Sunil, mother-in-law and brother-in-law demanded dowry and in order to fulfil their demands a sum of ₹2 lacs was given to them. The complainant borrowed this amount from Subhash Commission Agent, Gharaunda. However, they were not satisfied and they demanded another sum of ₹7 lacs to purchase a car. Such allegations, it is submitted, were raised against the said three accused persons in the Panchayat convened in July 2015. The three accused Sunil, his brother and Anil present in the Panchayat apologized and assured not to indulge in such behaviour again and neither raise any demand for dowry. The complainant's sister was sent back to her matrimonial home on their assurances. Without naming any particular accused, it is averred that the harassment to the deceased did not abate. Ultimately the complainant's sister was done to death on 27.9.2015. The complainant, it is stated, came to know that the abovesaid accused in conspiracy with respondent No.2 Siri Kaur and Deepu S/o Krishan had killed his sister for non fulfillment of their demand of dowry.

Much stress has been laid on the suicide note alleged to be written by the deceased. Translation of the above suicide note reads as under:-

“1. Sir Kaur

2. Krishan

3. Anil

4. Sandeep

5. xxxx

6. Ravi

7. Kamla

8. Pawan

9. All these are the cause of my death.”

It is to be noted that the name of the husband Sunil at Sr.No.5 has been scored out.

It is relevant to note at this stage that for summoning a person to face trial as an additional accused under Section 319 Cr.P.C, the test to be applied is one which is more than existence of a prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent, that the evidence, if it goes unrebutted, would lead to conviction. There has to exist strong and cogent evidence against such accused to summon him under Section 319 Cr.P.C. to face trial. Reference in this regard can be usefully made to the judgements of the Hon'ble Supreme Court in *Babubhai Bhimabhai Bokhiria and another v. State of Gujarat and others* 2104 (5) SCC 568 and *Hardeep Singh v. State of Punjab and others* 2014 (1) RCR (Crl.) 623. Mere probability of the complicity of the accused person by itself is clearly not sufficient to justify the summoning under Section 319 Cr.P.C. Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 15.02.2017 which warrants any interference by this Court. The learned Trial Court has rightly dismissed the application under Section 319 Cr.P.C. for summoning respondents No. 2 to 5 at this stage.

Accordingly, this petition is dismissed.

3.4.2017
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(LISA GILL)
JUDGE

Note: Whether speaking/reasoned

Yes / No

Whether Reportable:

Yes / No