

CRR No. 1891 of 2016 (O&M)

-/-

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

**CRR No. 1891 of 2016 (O&M)
Date of decision : 22.03.2018**

Bala Ram

.....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Parmod Chauhan, Advocate
for the petitioner.

Mr. Arun Kumar, AAG, Haryana.

Ms. Aashna Gill, Advocate for
Mr. Aman Pal, Advocate
for respondent nos.2 to 5.

ANITA CHAUDHRY, J.

The instant petition is by the complainant as his application
filed under Section 319 Cr.P.C. has been dismissed by the trial Court.

Elaborating the facts first as they appear from the record, the
prosecutrix was 14 years old. She got a FIR lodged in February 2015 and
disclosed that there was a wedding in the neighbourhood and lot of
relatives and neighbours had arrived. At about 7:00 PM she had gone to
fetch water from the tap installed in the street in front of their house. Her
aunt Jaswinder Kaur along with her brother Parveen and two friends

CRR No. 1891 of 2016 (O&M)

-2-

known to Parveen were present there. The allegations were that all of them caught hold of her hand and dragged her into her aunt's house and pulled the shutter down and when she tried to raise noise her mouth was closed and all three of them raped her. She tried to free herself but was unable to do so. Allegations were also made that she was threatened. The incident occurred at about 7:00 PM on 20.02.2015. The matter was reported the same night on 21.02.2015. Few months later the prosecutrix died an unnatural death in her own house. An FIR was lodged by the grand-father where he alleged that the girl was alone in the house, Rajesh, his wife, daughter and 4/5 other persons (named) entered his house and the family was away for labour work and she was beaten up and threatened. On account of fear and tension the girl poured oil upon herself and set herself ablaze. The police registered the FIR and recorded the statement of the witnesses and challaned Rajesh Kumar, his wife and Kanta w/o Jai Singh.

The prosecution examined Bala Ram - complainant and Radha Devi - mother of the victim. An application under Section 319 Cr.P.C. was thereafter moved, which has been dismissed by the trial Court.

Aggrieved by the order, the complainant has filed this petition.

I have heard counsel of both the sides.

The counsel for the petitioner contends that the victim had

CRR No. 1891 of 2016 (O&M)

-3-

been raped regarding which an FIR was registered and the accused who were seven in number came to the house of the complainant when the girl was alone and poured kerosene oil on her and set her on fire. It was urged that the villagers informed the family and they immediately returned and the girl was taken to the hospital and on the way she gave the details and named the persons who had set her on fire. It was urged that the girl had injuries on her person and she was constantly being harassed. The counsel further urges that the girl was taken in the car of the Sarpanch Ranbir to the hospital. It was urged that the complainant and the girl's mother had named the persons who had murdered the girl but they were let off by the police and some of the accused were not arrested and the Court had erred by dismissing the application.

On the other hand, the submission is that as per the version which has appeared in the statement of witnesses, the grand-mother Kesho was sitting outside the house and there was only one entry to that house and the whole story is concocted. It was urged that in the first version given to the police, the complainant had stated that the girl had set herself on fire and thereafter they changed the stand and stated that the accused had poured the kerosene oil on her and set her on fire. It was urged that the two witnesses examined by the prosecution were not present at the spot and the condition of the victim was serious and she could not have given any details and the MLR does not show the presence of the relatives in the hospital and no injury was noted in the MLR and

CRR No. 1891 of 2016 (O&M)

-4-

the trial Court had examined the evidence and critically analyzed it and after referring to the legal position, it has dismissed the application holding that the summoning of the additional accused would be an abuse of the process of the Court and there was no foundation to summon the additional accused. It was urged that the complainant side had moved an application for summoning Rajesh as an additional accused and in that case also the prosecution had improved upon its story and had introduced a new person and the application under Section 319 Cr.P.C. was dismissed and the revision filed by the complainant side was also dismissed. It was urged that no case for summoning additional accused was made out and the two witnesses examined by the prosecution were not present on the spot and therefore, evidence is hear-say.

The power to summon additional accused is found in Section 319 Cr.P.C. and the Court can proceed even against those persons who are not arraigned as accused and it cannot be disputed. A Constitution Bench in **Hardeep Singh Vs. State of Punjab 2014(3) SCC 92** explained the purpose behind the provisions and it also settled the controversy on the issue whether the word 'evidence' used in Section 319 Cr.P.C. indicates the evidence collected during investigation or it was limited to the evidence recorded during trial. It was held that it is that material, after cognizance is taken by the Court, that is available to it while making an inquiry into or trying an offence, which the court can utilise or take into consideration for supporting reasons to summon any person on the basis

CRR No. 1891 of 2016 (O&M)

-5-

of evidence adduced before the Court. The word ‘evidence’ has to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. It means that the power to proceed against any person after summoning him can be exercised on the basis of any such material as brought forth before it. At the same time, the Court cautioned that the duty and obligation of the Court becomes more onerous to invoke such powers consciously on such material after evidence has been led during trial. The Court also clarified that ‘evidence’ under [Section 319 Cr.P.C.](#) could even be examination-in-chief and the Court is not required to wait till such evidence is tested on cross-examination, as it is the satisfaction of the Court which can be gathered from the reasons recorded by the Court in respect of complicity of some other person(s) not facing trial in the offence.

The important question that would arise is what is the degree of satisfaction that is required for invoking the powers under Section 319 Cr.P.C. and the related question would be under what situations the power should be exercised in respect of a person named in the FIR but not challaned. These two aspects were detailed by the Constitution Bench in ***Hardeep Singh's*** case (supra) and answered in the following manner:-

“95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under [Section 319 CrPC](#), though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in [Vikas v. State of Rajasthan \[\(2014\) 3 SCC 321\]](#) , held that on the objective

satisfaction of the court a person may be “arrested” or “summoned”, as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

xx xx xx

105. Power under [Section 319](#) CrPC 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.

106. 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](#) CrPC. In [Section 319](#) CrPC 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](#) CrPC to form any opinion as to the guilt of the accused.”

The trial Court undoubtedly has the jurisdiction to add any

CRR No. 1891 of 2016 (O&M)

-7-

person not being accused before it to face trial but only if the Court is satisfied that the persons who have not been arraigned as accused should face the trial. The trial Court can take a step to add such person as accused on the basis of evidence adduced before it. In so far as the material collected by the Investigating Officer at the stage of inquiry is concerned, it can be utilized for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. but the power under Section 319 Cr.P.C. is an extraordinary one and has to be exercised sparingly where the circumstances of the case so warrant.

If we examine the statement made by the witnesses and apply the principles to the facts of the present case, it is found that the witnesses were not present at the time of the occurrence and had not seen the occurrence. They have also not stated that they had taken the girl to the hospital. Bala Ram had stated that he did not know that he had taken the girl to the Civil Hospital at Ladwa and how she was taken. The trial Court had found that in the First Information Report, the complainant had stated that the girl had set herself on fire but when the complainant stepped into the witness box he stated that the accused named by him had set the girl on fire. According to him he had received a telephone call and those names were provided. He had also stated that an occurrence had taken place in the morning and therefore, he had advised the family members to stay indoors. The trial Court recorded the following:-

“13. After going through the statements of the

witnesses, as detailed above made in the Court, it is clearly evident that the role attributed to the persons namely Kesar Singh, Billi alias Sapna, Panchu, Satinder Kaur is not sufficient enough to warrant their trial under Sections 302 of the Indian Penal Code, 1860, the charge for which accused Rajesh, Kanta and Parmawati are facing trial in the present FIR. The investigating agency has thoroughly investigated the matter and found them innocent being not connected with the alleged offence.

14. It is true that the Court is not bound by the opinion of the investigating officer and it is required to apply the tests on the touchstone of the materials brought on record as well as a balance is required to be maintained and to scrutinize the materials more closely. Till date, no such cogent evidence has at all come during trial which shows even a prima facie complicity of the afore named person in the crime. The feeble evidence has been led by the prosecution which does not connect them with the commission of the crime in question.

The evidence produced on record at this stage does not indicate a reasonable prospect that the persons who are sought to be summoned would be convicted. The mere suspicion of their involvement is not suffice to summon them as accused. There is no eyewitness account against them on file. In the given fact-situation of the case, investigation of the police cannot be brushed aside in the light manner.

15. The fulcrum on which invocation of section 319

of Cr.P.C. rests is whether the summoning of persons other than the named accused would make such a difference to the prosecution as would enable it not only to prove its case but to also secure the conviction of the persons summoned.

16. *The evidence which has been brought on file to connect the persons with the commission of the offence are hearsay in nature. None has seen the occurrence and they did not ascribe any role or specific role to the afore named persons, while participating in the crime in question. There is no direct evidence of the complicity of the persons who are father, brother, sister and wife of accused Rajesh, already facing trial along with his aunts Parmawati and Kanta, in the incident in question and have already been exonerated by the police. Thus, it would not be proper to subject them to trial by invoking the provisions of Section 319 of Cr.P.C.*

The summoning of the afore named persons as additional accused will not achieve any criminal justice, rather, it will be abuse of the process of the Court in case of their entanglement in this case. The allegations levelled against them are not on solid foundation.”

The police had investigated the case and had challaned three persons and the police did not find any evidence against the remaining accused. The trial Court exhaustively dealt with the evidence and doubted the version of the complainant and has given its reasons for rejecting it. The police also could not collect any material which could point towards

CRR No. 1891 of 2016 (O&M)

-10-

their complicity.

I find that the trial Court was justified in dismissing the application. There was no evidence which hinted at even a mere possibility of complicity of other persons.

I find no merit in the petition and is dismissed.

22.03.2018
sunil

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No