

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

Sr.No.109

**Criminal Revision No.2751 of 2016
Reserved on:22.11.2018
Pronounced on :27.11.2018**

Narenderpetitioner

Versus

State of Haryana and anotherrespondents

Criminal Revision No.2963 of 2016

Vijay and anotherpetitioners

Versus

State of Haryana and anotherrespondents

Criminal Revision No.2869 of 2016

Vinay Kumarpetitioner

Versus

State of Haryana and anotherrespondents

CORAM: HON'BLE MR.JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Shalender Mohan, Advocate
for the petitioner in CRR No.2751 of 2016

Mr.Pankaj Mehta,Advocate
for the petitioner(s) in CRR Nos.2963 and 2869 of 2016

Mr.Himmat Singh, DAG Haryana

Mr.Kuldeep Khandelwal, Advocate
for respondent No.2 in all the cases

ARVIND SINGH SANGWAN, J. :

This order shall dispose of three revision petitions i.e. CRR

No.2751, 2963 and 2869 of 2016, arising out of the common impugned order dated 25.07.2016, passed by the Additional Sessions Judge, Hisar. However, for the sake of convenience the facts are being extracted from CRR No.2751 of 2016.

Prayer in these petitions is for setting aside the order dated 25.07.2016 passed by the Additional Sessions Judge, Hisar, vide which the application filed by respondent No.2 under Section 319 of the Code of Criminal Procedure (for short, 'Cr.P.C.') was allowed and the petitioners namely Narender, Rajender, Vijay and Vinay Kumar (petitioners in all the present three petitions), were summoned as additional accused.

Brief facts of the case are that respondent No.2 Sita Devi registered an FIR No.535 dated 24.12.2013, under Section 306/34 of the Indian Penal Code (for short, 'IPC'), Police Station Sadar, Hansi, against Parhlad and Madan Lal with the allegations that her marriage was solemnised with Radhey Sham. On the previous night, she along with her husband were sleeping in the inner room of the house and in the morning when she woke up she saw that the outer room was locked from inside and when she opened the door, she saw that her husband was hanging from the hook on the roof. When she raised hue and cry, her mother-in-law Shanti Devi along with her sister Guddi came there. It is further stated that her husband was disturbed from the last 2/3 days but he did not inform anything to her and had committed suicide by hanging. It is further stated that her husband had taken money from 2/3 persons and had further given to Parhlad and Madan Lal, on interest, and in the Panchayat they accepted receiving only Rs. 4 lakhs but till date, no money was returned and they were threatening him. On that account her husband had committed suicide.

After registration of the FIR, the police recovered a suicide note, which reads as under:

“I Radhey Sham son of Sh.Pat Ram r/o VPO Garhi declared in my full sense, I had given Rs.15,90,000/- to Parladh and Madan Lal r/o VPO Dhana. They had taken above said amount by giving me false assurance for getting share in brick kiln. Later on, they threatened me and also completed the threat through the help of police. That Parladh had admitted in front of Panchayat and police that we have called Radhey Sham at Dhana and I have Rs. 4 lacs of Radhey Sham. At the same time ASI Jaipal stopped Parladh for saying something and enquiry was done from the person went from out side and pressurise also, thereafter, ASI took the statement of my brother in law (Sala) as he wanted to take. That from the beginning ASI was in collusion, in the earlier FIR he took my statement and got my signature on two pages in which one was my FIR second was page with carbon paper, which was later on misused by ASI for saving the accused and it was converted in original FIR. After taking my statement ASI asked me to give Rs.2400/- for patrol of the vehicle and said that we are coming private vehicle therefore you have to give this money and they took Rs.2400/- and went away now, I Radhey Sham harassed by Madan Lal, Parladh, Narender son of Parladh, Rajinder son of Lakhi Ram Jhola Chhap Doctor, Vijay Jogi son of Lakhi Ram, Vinay son of Maman Ram, so much that and compelled me to suicide therefore for I am committing suicide. These people are saying only one line that we have spend 4/5 lacs rupees you can go high court, Supreme Court no one will take action against us and neither you can take even single rupees from us. If you did not lodge an FIR, we would give you. now, if you want to live and want to see your children live then close this case here alone it is only for your beneficial. Sir,

with folded hand I have request to you that justice be done with my children I shall be thankful to you. Radhey Sham sd/- 22.12.2013.

Sir, they saying only one thing we have taken money from Radhey Sham if he would not lodge case then we would return the amount, that 3 times we have send peoples at the home of Radhey Sham at that time they did not accept now he can register case anywhere. Sir I Radhey Sham that these persons due to political approach and money power are not let the police officials to do their duty with honestly. Sir, on account of threatening of these persons, I have been compelled to commit suicide. I am going to commit suicide by harassment of Madan Lal, Parladh, Narender son of Parladh, Rajinder son of Lakhi Ram Jhola Chhap Doctor, Vijay Jogi son of Lakhi ram, Vinay son of Maman Ram. Sir your requested with folded hand that justice be done with wife and children and accused person be punished strictly so that in future accused person would not harass any person and would come to know that every police officer is not corrupt one. They have so much proud that they have purchased the police station by giving Rs.4/5 lacs. Sir, 6 month before I have given complaint against police of Sadar PS to PM Sahib, President Sir, CM sahib, SP Sahib and DC Sahib etc. but till date no action has been taken. Radhey Sham sd/- 22.12.2013.

Thereafter, the police conducted the investigation and submitted a report under Section 173 Cr.P.C. against the aforesaid two accused Parhlad and Madan Lal and framed charges against them under Section 306 IPC. Thereafter, the complainant Sita Devi appeared as PW1 and made the following deposition:

“ Stated that I am an household lady. My marriage was solemnized about 12 years ago. I have two sons. My

husband used to work with a lab and lateron he was unemployed. On 24.12.2013, at about 6.00 am when I opened the door, I saw that my husband had hanged himself in a rope which was attached to an iron ring fitted with the fan. I cried and on which my mother in law, Shanti Devi and my Mosi Guddi came on the spot. Lateron, police visited the scene of occurrence. My husband had advanced loan to Prahalad and Madan. He was intention for the last two three days and that's why he committed suicide. There is nothing else. When I got up in the morning, I saw he was hanging over a fan inside the bathak (drawing room). When I raised alarm, my maternal aunt Guddi, Shanti Devi and Chacha (uncle) Narsi came to the spot. Lateron, other neighbours gathered on the spot. After some time, police also reached there. Police recorded my statement, which is Ex.P1 bearing my signatures at point A. Dead body of my husband was brought to Hansi, however, I cannot state, where dead body was carried to. I got recorded my statement to the police and on the basis of doubt, I got recorded the names of Madan and Prahalald. Self stated my husband had mentioned name of seven persons in his suicide note, however I asked police to carry on police proceedings only against Prahalad and Madan, volunteered I asked police official to initiate criminal proceedings against remaining five accused on arrival of writing result of FSL. Strict action against all seven accused namely Rajender, Narender, Vijay, Vinay, ASI Jaipal, Madan Lal and Prahalad and they be punished accordingly with heavy punishment. My husband did commit suicide due to unbearable circumstances created by above accused and due to heavy pressure, he finished his life. They be given exemplary punishment so as to create deterrence in the society. I also moved complaint before SSP Hisar. Besides this, I have to say nothing.

Xxx By Sh.Vinay Tayal and Rajesh Jain, defence

counsel for accused Prahlad and Madan.

Just after marriage, my husband was doing job in blood testing laboratory at Saini Hospital of Hansi. He used to test the blood in the lab. He was having a degree for blood testing. However, police did not took the degree from me and I can produce same before court, if it is required. Today, I have not brought the above said degree of my husband. The salary of my husband was Rs.10,000/- per month. Salary was used to be paid in cash. There was no appointment letter in favour of my husband from the hospital where he was working. In 2011, my husband had left the business of laboratory blood testing. Thereafter, he started the work of tent house and other marriage articles. I have two children both are school going. They are studying in BPS school at Meham (Private). The distance of school premises from my residence at approximately hundred kilometres. Total expenditure of both children in above school is Rs.1,00,000/- for one year, besides this, I pay nothing. It is incorrect to suggest that no amount was ever advanced as loan to Prahalad and Madan.

2. *It is correct that Prahalad and Madan belong to village Dhana Kalan. I am khatri by caste, but I do not know the caste of accused. We were not having any family relation. However, my husband had relations with Prahalad and Madan. When some one visit village Garhi from Hisar, then village Dhana Kalan is on the way.*

3. *Many people have gathered in our house. People have gathered in outer room. Bhatak(drawing room) and in my bed room. Many people have reached the spot before the visit of the police and some came after the arrival of police. People kept standing in the bhathak.*

4. *I do not know who inform the police and at what time, police reached out house. Police remained on the spot for about one hour. My statement was recorded in the house of my father in law. I cannot tell whether Sarpanch member*

Panchayt, Lumberdar or other big guns of the village were present or not. However many persons were there.

5. It is incorrect to suggest that an FIR No.225 dated 09.06.2013 for commoting offence 328 506 34 IPC was got lodged by my husband with P.S.Sardar Hansi and the same was found false. It is also incorrect to suggest that during investigation, police found the FIR false and recommended due initiating proceedings under Section 182 IPC. It is also incorrect to suggest that I am deposing falsely to grab money from Prahalad and Madan.

Remaining cross examination is deferred as application under Section 319 of Cr.P.C has been moved by learned PP. Remaining cross examination would be accomplished after disposal of application under Section 319 Cr.P.C.

Thereafter, the public prosecutor moved an application under Section 319 Cr.P.C. for summoning the present petitioners as additional accused. In the application, it is stated that it has come in the statement of PW1/complainant Sita Devi about the involvement of the petitioners and therefore, they are liable to be summoned under Section 319 Cr.P.C. The said application was opposed by Prahlad and Madan Lal, who are facing the trial. The trial Court vide impugned order dated 25.07.2016 accepted the same and summoned the petitioners as additional accused. The present petitions have been filed by the petitioners praying for setting aside of the said impugned order.

Learned counsel for the petitioners has submitted that the petitioners were not named in the FIR and even a perusal of the suicide note shows that except for naming them, no overt act, motive or mens rea is attributed to them. Learned counsel for the petitioners further submitted that in the suicide note, the deceased has named only Madan Lal and

Prahlad with whom he had the dealing and has further levelled allegations against police officials that under the influence of Prahlad and Madan Lal, he was being harassed.

Learned counsel for the petitioners has further submitted that from the statement of PW1/Complainant-Sita Devi, it is apparent that no fresh or convincing evidence that has come on record to summon the petitioners as additional accused.

Learned counsel for the petitioners has further argued that neither in the FIR nor in the report under Section 173 Cr.P.C., which was submitted after due inquiry, any incriminating evidence has come against the petitioners that they had any direct business dealing with Radhey Sham. Learned counsel submits that even in the suicide note or in the statement of PW1/complainant, nothing is mentioned that how the petitioners were having any dealing with the deceased except that they are responsible for his death.

Learned counsel for the petitioners have relied upon a Constitutional Bench judgment of the Hon'ble Supreme Court in the case of ***Hardeep Singh vs. State of Punjab and others, (2014) 3 SCC 92***, wherein the Hon'ble Supreme Court has held as under:

110. We accordingly sum up our conclusions as follows:

Question Nos.1 & III

Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND

Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused. Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the chargesheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No. II

Q.II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused

proposed to be summoned to be tested by cross-examination.

Question No. IV

Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No. V

Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not chargesheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be

summoned afresh.

The matters be placed before the appropriate Bench for final disposal in accordance with law explained hereinabove.

Learned counsel for the petitioners have further relied upon **2017(3)RCR (Criminal) 374, Brijendra Singh and others vs. State of Rajasthan**, wherein it has been held as under:

12) *The moot question, however, is the degree of satisfaction that is required for invoking the powers under Section 319 Cr.P.C. and the related question is as to in what situations this power should be exercised in respect of a person named in the FIR but not charge-sheeted. These two aspects were also specifically dealt with by the Constitution Bench in Hardeep Singh's case 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.

(emphasis supplied)”

13) In order to answer the question, some of the principles enunciated in Hardeep Singh’s case may be recapitulated:

Power under Section 319 Cr.P.C. can be exercised by the trial court at any stage during the trial, i.e.,

before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some 'evidence' against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The 'evidence' herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom chargesheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.

14. When we translate the aforesaid principles with their application to the facts of this case, we gather an impression that the trial court acted in a casual and cavalier manner in passing the summoning order against the appellants. The appellants were named in the FIR. Investigation was carried out by the police. On the basis of material collected during

investigation, which has been referred to by us above, the IO found that these appellants were in Jaipur city when the incident took place in Kanaur, at a distance of 175 kms. The complainant and others who supported the version in the FIR regarding alleged presence of the appellants at the place of incident had also made statements under Section 161 Cr.P.C. to the same effect. Notwithstanding the same, the police investigation revealed that the statements of these persons regarding the presence of the appellants at the place of occurrence was doubtful and did not inspire confidence, in view of the documentary and other evidence collected during the investigation, which depicted another story and clinchingly showed that appellants plea of alibi was correct.

15. This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so-called verbal/ocular version. Thus, the 'evidence' recorded during trial was nothing more than the statements which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether 'much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record

was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny.

16. As a consequence, this appeal is allowed setting aside the order of summoning the appellants under Section 319 Cr.P.C.

Learned counsel for the petitioners have further relied upon the judgment of Hon'ble Supreme Court in ***Labhuji Amratji Thakor and others vs. The State of Gujarat and another***, in ***SLP (Criminal) No.6392 of 2018***, decided on 13.11.2018, wherein while relying upon the Constitution Bench judgment in the case of *Hardeep Singh(supra)*, the Hon'ble Supreme Court has held that while allowing an application under Section 319 Cr.P.C. the Court has to apply the test i.e. “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.”

Learned counsel for the petitioners further argued that though in the application filed under Section 319 Cr.P.C., it was also prayed that one ASI Jaipal, whose name is also mentioned in the suicide note be also summoned as an additional accused. However, the trial Court has dismissed the application qua him and neither the State nor the complainant has challenged the said order to that extent.

In reply, learned State counsel assisted by the counsel for the complainant has however submitted that the petitioners have been named in the suicide note, that they are responsible persons for the suicidal death of husband of the complainant Radhey Sham and there is an accusation of

threat to his life at the instance of all the persons.

It is further stated that as per the FSL report, the hand writing of deceased Radhey Sham has matched with the suicide note and petitioner Narender son of Prahlad and therefore, the trial Court has rightly summoned the petitioners as additional accused.

In reply, learned counsel for the petitioners has argued that the statement of PW1 is nothing but a mere reiteration of a statement made before the police under Section 161 Cr.P.C and rather she has made certain improvements and no fresh or new evidence has come on record.

After hearing learned counsel for the parties, I find merit in the present petitions for the following reasons:

(a) The petitioners were not named in the FIR initially and the complainant being the wife of deceased Radhey Sham has not raised any suspicion towards them. Even a perusal of the suicide note do not suggest that they had acted in a manner, which abetted Radhey Sham to commit suicide. Therefore, the element of abetment as per Section 107 IPC, is not made out against petitioners from the perusal of the suicidal note. Even, in the report submitted under Section 173 Cr.P.C., the police, after due verification could not collect any evidence against the petitioners and the report was submitted only against two persons i.e. Prahlad and Madan Lal.

(b) Statement of complainant while appearing as PW1 is nothing but reiteration of her version given to the police with some improvements and the same cannot be termed as a fresh evidence or convincing evidence which is sufficient to prima facie hold that the same would be sufficient to convict them. In view of the judgment of Hon'ble Supreme Court in the cases of *Hardeep Singh*, *Brijendra Singh* and *Labhuji Amratji Thakor*

(*supra*). The trial Court has not appreciated that the evidence which has come on record before the trial Court is not more than prima facie case.

(c) Even otherwise from the FIR, suicide note and the statement of PW1, it cannot be held that the element of abetment is there as nothing has come on record to show that the petitioners have acted in a manner that induced the deceased Radhey Sham to commit suicide. In the suicide note, Radhey Sham has levelled the allegations against Prahlad and Madan Lal as well as on the police officials that they are threatening and putting pressure on them and no over act or motive or mens rea is attributed towards the petitioners.

(d) Even in the entire prosecution case i.e. FIR, report under Section 173 Cr.P.C. or suicide note, it is not made out that petitioners had any direct money dealing with the deceased and rather it is specific against Parhlad and Madan Lal.

In view of the same, the present petitions are allowed. The impugned order dated 25.07.2016 passed by the trial Court is set aside.

(ARVIND SINGH SANGWAN)
JUDGE

27.11.2018

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Whether speaking/reasoned
Whether reportable-

Yes/No.
Yes/No