

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Revision No. 624 of 2016
Date of Decision: 03.5.2018**

Harish Chander Sharma

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. P.S.Ahluwalia, Advocate
for the petitioner.

Mr. K.S.Aulakh, DAG, Punjab.

Mr. G.S.Bhatia, Advocate
for the complainant.

ANITA CHAUDHRY, J

The petitioner has assailed the order dated 8.12.2015 vide which he has been summoned as additional accused under Section 319 Cr.P.C. in FIR No. 59 dated 3.4.2013 registered at Police Station Sadar, Amritsar under Section 306/34 IPC.

The essential facts are necessary to be delineated pertaining to the FIR and the proceedings which took place after that.

Parshotam Lal gave a complaint to the police wherein he disclosed that Lata wife of Ravinder Kumar was residing in their colony and his wife Asha became acquainted with her and they became good friends. Asha came under the influence of Lata. On her advice she handed huge amounts to Lata. Asha Rani had collected the amount from her relatives and mortgaged the property owned by the family. Initially Asha had hidden

the dealings with the family but when the creditors started approaching them and pressurized her to repay the amount that the complainant came to know of it. Asha approached Lata but she failed to repay the amount and rather refused to pay back the amount which caused depression to Asha and she consumed poison and committed suicide.

A suicide note executed by the deceased was recovered and Lata was arrested. Tarsem Kumar who was named in the suicide note, could not be arrested. The trial started. The complainant named Harish Chander, a bank officer and an application was filed for summoning him as an additional accused. The Additional Sessions Judge, Amritsar vide order dated 20.1.2014 summoned Harish Chander who was named in the suicide note. The petitioner approached the High Court and the Coordinate Bench set aside the order and remanded the case back to the Additional Sessions Judge and gave liberty to the prosecution to file an application under Section 319 Cr.P.C.

The prosecution moved fresh application under Section 319 Cr.P.C. which was allowed and the petitioner was summoned.

Notice was given to the respondents.

I have heard both the sides.

Counsel for the petitioner contends that the petitioner was not named in the FIR nor any overt act was attributed to him and the petitioner has been named on account of the supplementary statement recorded after 20 days of registration of the FIR. It was urged that in the suicide note the petitioner has named as Harish Sharma alias Rajiv Khosla and primarily the allegations are against Lata and there is no specific attribution to the petitioner and there appears to be some confusion in the mind of the author

of the note as the petitioner is being confused with another bank officer who was working earlier in this bank. It was urged that the petitioner had no concern with the deceased and therefore his name did not appear in the initial version. It was urged that a thorough enquiry was conducted by the Additional Deputy Commissioner of Police and it was found in the enquiry report (Annexure P-5) that Rajiv Khosla was Manager of State Bank of India in the year 2002 whereas the petitioner was posted since October 2010. It was urged that the call details of the deceased and other accused were obtained and the police officials in its report have referred to it and they found that there was no conversation between the deceased and the accused. It was urged that the enquiry report would further reveal that the petitioner was being blackmailed by the complainant party who were demanding Rs. 3 lacs through their counsel if he wanted his exoneration. It was urged that even in the supplementary challan the investigating agency could not collect any material. It was urged that in the suicide note the only words are that "Major Harish Sharma @ Rajiv Khosla had taken illegal gratification from her (Lata) in the hotel and the bank manager was also responsible for her death" but thereafter it refers to the amount taken as bribe by the police officer. It was urged that the allegations mainly are against Lata and Pappu Tarsem and towards the end she had blamed Lata and Pappu Tarsem of cheating her. It was urged that the police had made enquiry and the enquiry report is available at page 37 and 43 (Annexure P-5) and it was found that Asha did not have any account nor had taken any loan and the gratuity had been paid to Lata much earlier in 2004. Explaining the sequence the counsel submits that Lata Sharma's father was a Class-IV employee in a hospital and his gratuity was to be released and Lata

had given a false story to the deceased that she had to get some money from the bank and was putting off Asha. It was urged that a demand of Rs. 3.00 lacs from the petitioner had been made through the counsel and it was recorded and that recording was handed over to the police and different officers had carried out a detailed investigation and had reported that Lata was fooling Asha and no money was due to Asha from the bank nor any arrears of gratuity were outstanding. It was urged that the complainant had no knowledge about the facts which are mentioned in the suicide note and therefore they did not name him earlier and their evidence is just hearsay. It was urged that in ***Hardeep Singh versus State of Punjab and others 2014(3) SCC 92*** the Apex Court had held that the degree of satisfaction for summoning an additional accused would be higher. It was urged that in ***Brijendera Singh and others versus State of Rajasthan 2017(3) R.C.R (Criminal) 374*** the Supreme Court has gone a step further and had noted that the evidence recorded during trial was the same which was contained in the statement already made under Section 161 Cr.P.C. and no new evidence had been produced and when the investigating officer had collected the evidence then the trial Court was bound to look into the same to form a *prima facie* opinion and whether the complicity of the additional person was there. It was urged that much stronger evidence is required than mere possibility. Reliance was placed upon ***Hardeep Singh versus State of Punjab and others 2014(3) SCC 92***, ***Brijendera Singh and others versus State of Rajasthan 2017(3) R.C.R (Criminal) 374***, ***Michael Machado and another versus Central Bureau of Investigation and another 2000(2) R.C.R. (Criminal) 75*** and ***Sarojben Ashwinkumar Shah etc. versus State of Gujarat and others 2011(3) R.C.R. (Criminal) 852***.

On the other hand the submission on behalf of the complainant and the State was that the petitioner had been named in the suicide note and it refers to the fact that he was responsible for the death and the suicide note, which has the value of dying declaration, was enough to summon the additional accused. Both the counsels had supported the order passed by the Court below.

A reading of the suicide note would show that the deceased had referred to Harish Sharma @ Rajiv Khosla and the reference is in the context that he had taken illegal gratification from Lata. The police had carried out a thorough investigation and had found that the deceased did not have any account in the bank. They also found out that Rajiv Khosla was earlier a Manager in that bank in 2002. It also found that the gratuity amount was released to Lata's family sometime in October 2004. The police had also collected the call details of the accused and found that there was no exchange of calls between the deceased and the accused. It is also evident that the complainant did not know the petitioner and therefore he did not name him in the FIR. The petitioner's name cropped up after 20 days when they discovered a suicide note. The complainant and his family members were not aware of the fact that Asha had been giving money to Lata. The main accusation in the suicide note are that Lata had taken the money and according to her she had given the same to the Manager and the money had not been returned. The allegations are that Lata and Tarsem Pappu had mixed something in her tea and when she became unconscious and under its influence her signatures were taken and now she was being threatened. It was also stated that she had repaid Rs. 3.00 lacs but Tarsem Pappu was denying it. It also refers to the harassment at the hands of Tarsem Pappu

and that he had obtained her signatures and had made an alteration in the amount and that Tarsem Pappu had cheated her and that the registered sale deed was also in his possession. Thereafter Asha had given details of the amount which had been paid to various persons which does not include the name of Harish Sharma.

The prosecution had examined the complainant and his son. Their evidence is not based on personal knowledge and is mere hearsay. The police had conducted a thorough enquiry and did not find any connection between Lata, Asha and the bank manager.

In **Hardeep Singh's** case (supra) the Apex Court dealt with the moot question i.e. the degree of satisfaction that is required for invoking the powers under Section 319 Cr.P.C. and the Constitution Bench had answered the same 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 unrebutted, 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.”

In **Hardeep Singh’s** case (supra), the Constitution Bench has also settled the controversy on the issue as to whether the word ‘evidence’ used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and indicates the evidence collected during investigation or the word ‘evidence’ is 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 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, this 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.

In **Brijendra Singh's** case (supra) the Court was dealing with an application filed under Section 319 Cr.P.C. and noted as under:-

“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.”

No doubt the Court has the power to summon additional accused but the power under Section 319 Cr.P.C. is an extraordinary power and has to be exercised sparingly where the circumstances of the case so warrant. On examining the First Information Report it is found that the petitioner was not named in the FIR. The family had come to know that Asha had lent money to Lata and beyond that they did not know anything. It is only on discovery of a suicide note that supplementary statement was made 20 days later. The police carried out a thorough investigation. They had recorded the statements of the witnesses. They had collected the call records and found that there was no connection between Lata and the bank manager or even Asha Rani. Asha Rani did not have any account in the bank. It appears that Lata offered a false excuse and blamed the manager for not giving the money which was due to her on account of the gratuity of her father. The deceased did not know that Rajiv Khosla was a different person. It has appeared in the enquiry that the deceased had never met Harish or Rajiv Khosla and could have heard the name from Lata and therefore she had named him in the suicide note. The trial Court had the entire record which includes the enquiry report. The trial Court had the deposition of the complainant and his son but there was no other material to support the oral statements. Their evidence recorded during trial was nothing more than the statement which was already there under Section 161 Cr.P.C. The trial Court was expected to go into the enquiry report and the material collected by the police. The trial Court was duty bound to look into that and then form an opinion as to whether there was stronger evidence than mere possibility of the petitioner's complicity. I find that there is no reference to the enquiry report. The order does not even record its (Court's)

satisfaction. The degree of satisfaction in this case was required to be more than the degree which is warranted at the time of framing of charge. The trial Court was required to form a *prima facie* opinion. It required stronger evidence than mere probability and that stronger evidence was missing in this case.

As a consequence, the petition is allowed and the order of summoning the petitioner under Section 319 Cr.P.C. is set aside.

**(ANITA CHAUDHRY)
JUDGE**

May 03, 2018
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : No