

In the High Court of Punjab and Haryana at Chandigarh

CRR-164-2017

Date of Decision: 19.2.2018

Surmukh Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ram Bilas Gupta, Advocate
for the petitioner.

Ms. Mahima Yashpal, A.A.G., Haryana.

Mr. R.S. Budhwar, Advocate
for respondents No.2 to 4.

ANITA CHAUDHRY, J (ORAL)

The petitioner is aggrieved by the dismissal of the application filed under Section 319 Cr.P.C.

A complaint was made to the police on the basis of which FIR (Annexure P-1) was registered on 23.10.2015. Surmukh Singh had 3 children, namely, Dharambir, Reena and Vikram. Reena was married to Nirmal about 8-9 years ago and she had two children. Dharambir and Vikram were married to Rajni and Kusum, sisters of Nirmal. Rajni obtained divorce from Vikram and after that divorce her sister Kusum left Dharambir and returned to her parents house and Reena came to live in Village Subhri.

There were differences between them and a Panchayat was convened and

the matter was settled and Reena went back to the matrimonial home and Kusum wife of Dharambir returned to village Subhri. The allegations are that Bharat Ram and his family started harassing his daughter and held a grudge because of the divorce obtained by Rajni. Rajni, Kusum and Nirmal is stated to have demanded money and they used to throw taunts upon his daughter. It was alleged that Santosh along with Bharat Ram also used to fight, threw taunts saying that the moment she has stepped into their house, the peace in their house had been disturbed. The allegations are that two days earlier Kusum and Rajni came to the village and taunted and abused his daughter and asked her to get money from her father. It was stated that on the day of the incident Bharat Ram, Nirmal and Santosh had abused his daughter and taunts and threats were extended. In the end the complainant had mentioned that her daughter had ended her life by consuming poison on account of the harassment caused by them. The complainant named Bharat Ram, his son, two daughters and Santosh.

The police after a thorough investigation filed the challan against the husband and father-in-law leaving out the rest.

An application under Section 319 Cr.P.C. was filed seeking to summon Santosh, Rajni and Kusum as additional accused.

The trial Court dismissed the application and the complainant is aggrieved by it.

I have heard both the sides.

The submission on behalf of the petitioner is that the complainant had named the persons but they were not challaned and the names were mentioned in Column No.2-A of the challan and similar allegations have been levelled against all of them the police had challaned

the husband and father-in-law only and the Court had ignored the principle laid down in '*Hardeep Singh Vs. State of Punjab 2.14(3) SCC 92.*'

On the other hand the submission was that the police had investigated the case and did not find any role of the sisters and the Aunt and the application was rightly dismissed.

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 the word was limited to the evidence recorded during trial. It 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, 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 situation 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 Cr.P.C. 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 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 power under Section 319 Cr.P.C. can be exercised at any stage and there is no doubt about it and the evidence means the material that is brought before the Court during trial. 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 complainant before the police and the statement made in the Court then it is found that the statements are identical. The complainant did not disclose any further material/information to show when his daughter had contacted him and the manner in which it was communicated to him. The Court was satisfied that the decree of satisfaction which was required for invoking the provisions under Section 319 Cr.P.C. were not existing. There had to be evidence

which was more than prima facie. The Court could summon only when there were strong and cogent evidence occurring against the additional accused sought to be summoned.

The police could not collect any material which could point towards the complicity of the additional persons. The Court also doubted the version given by the complainant on this aspect. I find that the trial Court was justified in dismissing the application. There was no evidence to show complicity on the part of the additional accused named by the complainant.

The petition is dismissed.

(ANITA CHAUDHRY)
JUDGE

February 19, 2018

ps-I

Whether speaking/reasoned : Yes

Whether reportable : No