

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 1712 of 2017 (O&M)
Date of Decision: 06.9.2018

Balwan Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rajender Kumar, Advocate
for the petitioner.

Mr. Ripu Daman, AAG, Haryana.

Mr. S.S.Siao, Advocate
for respondents No. 2 and 3.

ANITA CHAUDHRY, J

CRM-25495-2017

The application is allowed and Annexure P-3 is taken on record.

CRR-1712-2017

This revision is directed against the order dated 21.3.2017 passed by Additional Sessions Judge, Narnaul vide which the application filed by the complainant under Section 319 Cr.P.C. had been dismissed.

It would be necessary to give the facts of the case.

Savita was married to Sandeep in 2011. The allegations are that the mother-in-law, *nanad* and *devar* namely Manju and Anup, respectively started harassing her for not bringing sufficient dowry and demanded a sum of Rs. 1.00 lac. Savita returned to her parents house and

told them about the demand but they sent her back. Savita gave birth to a girl child but the child died soon. Thereafter the allegations are that after the death of the child, all the three accused again started harassing her and gave her a beating. The complainant took his daughter back to his house where she stayed for a year. The allegations are that Sandeep came to take his wife and stated that the mistake would not be committed again and they sent their daughter along with Sandeep but the harassment again started. Savita again conceived and she was left at her parents house and she gave birth to a boy. After one month, Sandeep came to take Savita with him. On 14.9.2016, the complainant received information that Savita had suffered electric shock and she was taken to the civil hospital and when they reached the hospital, they found her dead. It was also mentioned that when they asked his son-in-law, he told that his brother, sister and mother had spoiled his house.

The police investigated the case and arrested the mother-in-law and the husband and filed challan against two of them but the names of *nanad* and *devar* were placed in column No. 2.

The complainant stepped into the witness box and reiterated the allegations and thereafter an application under Section 319 Cr.P.C. was filed which has been dismissed.

Aggrieved by the dismissal, the complainant has filed this revision.

I have heard both the sides.

The submission on behalf of the petitioner is that respondents No. 2 and 3 were named in the FIR and were also named by the complainant and they have placed on record the zimni and the DSP had carried out an enquiry which is part of the challan. He further states that all the family

members were living in the same house and a role has been ascribed to all of them and they should have also been summoned to face trial.

On the other hand, the submission is that Manju was about 14-15 years old at the time of marriage and the *devar* was also unmarried and the trial Court had found that no case was made out to summon the additional accused and the investigating officer did not find their involvement. The counsel further submits that all the witnesses have been examined and the case is at the final stages and on account of stay, the final order could not be passed.

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 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 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.”

The trial Court undoubtedly has the jurisdiction to add any 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.

A perusal of the record shows that the report under Section 173 Cr.P.C. shows that though it refers to the investigation carried out by DSP,

Mahendergarh but the enquiry report is not part of the challan. The vernacular of the challan is also available and the documents appended along with the challan are also listed therein and it does not refer to the DSP's report. The counsel for the petitioner had specifically referred to para 16 of the enquiry report. This document is not part of the challan and the trial Court could not have considered this. Even otherwise on perusal, I find that the contents of para 16 in fact demolish the case of the petitioner. The DSP had noted that the deceased and her husband were living in the old house for the last one year while the remaining accused were living in a different house.

Considering the principles and applying the same to the present case, I am of the view that the trial Court was justified in dismissing the application filed under Section 319 Cr.P.C. There is no evidence which hinted at even a mere possibility of the complicity of the persons named by the complainant.

I find no infirmity in the order. The order is well reasoned. The petition is dismissed.

(ANITA CHAUDHRY)
JUDGE

September 06, 2018
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No