

112/2 **IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of decision:27.03.2018

(1) CRR No.2841-2017(O&M)

Soni

...Petitioner

Versus

State of Haryana and another

...Respondents

(2)CRR No.3969-2017(O&M)

Parveen

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sanjeev Kumar Aggarwal, Advocate
for the petitioner in CRR No.2841-2017

Mr. Naresh Kumar, Advocate
for the petitioner in CRR No. 3969-2017
for the respondent in CRR No.2841-2017

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in these petitions is for setting aside the order dated 20.07.2017 passed by the trial Court, vide which, the application filed by the prosecution for summoning three persons as additional accused, namely, Soni-daughter of Bishamber, Sonu and Monu sons of Bishambar, was partly allowed, thereby summoning Soni as an additional accused and was partly dismissed qua Sonu and Monu.

Petitioner-Soni in CRR No. 2841 of 2017 has impugned the aforesaid order, challenging her summoning by the trial Court and petitioner – Parveen in CRR No.3969-2017, being complainant has challenged the aforesaid order qua non-summoning of Sonu and Monu.

The brief facts of the case are that complainant-Parveen filed a complaint with police that marriage of his brother-Vikram was solemnized with Soni and she was residing at her parents' house for the last 8 months and was not ready to rehabilitate in her matrimonial house and on 24.06.2016, a Panchayat was convened in village Bapoli wherein the petitioner- Soni (who is wife of deceased-Vikram), her father, mother and brothers, namely, Sonu and Monu abused the complainant side and further threatened Vikram with dire consequences. Later on, on account of mal-treatment and mis-behaviour on the part of the accused persons, Vikram allegedly committed a suicide on 25.06.2015 and the aforesaid FIR No.350 dated 25.06.2016 under Section 306 and 34 IPC was registered.

The police, after investigation, submitted a challan against Bishamber son of Kali Ram whereas Soni, Sonu and Monu, were kept in column No.II as they were found innocent and after framing of charge against Bishamber, statement of three prosecution witnesses was recorded. After the statement of the complainant was recorded as PW-3, an application was moved on 19.01.2017 for summoning the above named three persons, Soni, Monu and Sonu, as additional accused. The application was contested by Bishamber by way of filing a reply and the trial Court, vide impugned order dated 20.07.2017 partly allowed the application qua summoning of Soni, however, dismissed the same qua Sonu and Monu and as such the petitioners have filed these two petitions challenging the same order.

Counsel for petitioner- Soni has submitted that the trial Court has passed the summoning order under Section 319 Cr.P.C. merely on the statement of PW-3, which is nothing but reiteration of the version given in

the FIR and there is no fresh evidence which has come on record to summon petitioner-Soni. It is further submitted that on the basis of the statement given by complainant-Parveen, the police has thoroughly investigated the case and petitioner-Soni was found innocent as she was staying at her parents' house for the last about 08 months and therefore, the deposition of the complainant as PW-3 being reiteration of the version given in the FIR, is not sufficient to summon the petitioner as an additional accused.

Counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court in **Hardeep Singh vs. State of Punjab and others 2014 (1) R.C.R. (Criminal) 623**, wherein it has been held that the quality of evidence for the purpose of summoning a person as an additional accused is not the same as required for the purpose of framing of the charge and only in case, some cogent and convincing evidence has come on record against the person who is sought to be summoned as an additional accused, an application filed under Section 319 Cr.P.C. should be allowed.

Counsel for the petitioner has also relied upon the judgment of this Court in **Sushil Soni Vs. State of Haryana, 2016 (3) RCR (Criminal) 793**, wherein, this Court while relying upon the judgment in **Hardeep Singh's case (Supra)** has held that for summoning a person as an additional accused under Section 319 Cr.P.C., the basic requirement is that it must appear to the Court that on the basis of the evidence, during the entire trial that the person who has not been made an accused in the report under Section 173 Cr.P.C. could be tried together with the accused who are already facing the trial.

In reply, counsel for complainant-Parveen, who is also the petitioner in CRR No. 3969 of 2017 has submitted that from the statement

of the complainant, who appeared as PW-3 as well as the suicide note Ex. P-8, it is proved that the petitioner- Soni as well as Monu and Sonu, have actively participated in the commission of offence as deceased-Vikram, has named them that they used to mal-treat him and were demanding money. It is also stated that even the petitioner /complainant as PW-3 has specifically named all the three persons that they used to harass his brother-Vikram, who committed suicide.

In reply, learned counsel for the petitioner (Soni) has submitted that there is no date mentioned in the suicide note and in the FIR, there is no reference to the same and therefore there is no evidence of abettment against the petitioner (Soni).

After hearing counsel for the parties, I find that the trial Court while passing the impugned order dated 20.07.2017, has not looked into all the aspects raised by the learned counsel for the parties. The trial Court has also not assessed the quality of evidence in the light of judgment of Hon'ble the Supreme Court in **Hardeep Singh's case** (Supra) and has not assigned any reason to disbelieve the report submitted under Section 173 Cr.P.C., therefore, the impugned order dated 20.07.2017 is set aside and the matter is remanded back to the trial Court to decide the application afresh after affording an opportunity of hearing to both the parties.

The parties are directed to appear before the trial Court on 27.04.2018.

Disposed of.

(ARVIND SINGH SANGWAN)
JUDGE

27.03.2018

Hemlata

Whether speaking/reasoned
Whether reportable

Yes / No
Yes / No