

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

**CRR-3966-2017 (O&M)
Date of decision: 19.02.2018**

Neelam

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Sandeep Gahlawat, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. Rishabh Lohan, Advocate
for respondents No.2 to 8.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for setting aside the order dated 14.09.2017, vide which the application filed by the petitioner under Section 319 of the Code of Criminal Procedure (for short 'Cr.P.C.') for summoning respondents No.3 to 8 as additional accused, was dismissed.

Brief facts of the case are that on the complaint of the petitioner, an FIR No.60 dated 03.03.2017 under Sections 147, 149, 302, 307, 506 of the Indian Penal Code (for short 'IPC') was registered at Police Station Jind Sadar, District Jind with the allegations that on 03.03.2017, the petitioner-complainant along with her mother was present on the agricultural land,

which was taken on lease by her father Satyanarain. In the meantime, accused Rohtash along with respondents No.3 to 8 was seen coming on a tractor and all the accused persons were sitting on the tractor. On seeing the complainant-Neelam, they raised a lalkara, why the complainant has come on the passage, which was constructed by the accused. The complainant ran away in order to save her life and accused Rohtash, who was driving the tractor, run over her and dragged her mother upto a distance of half acre and she was entangled with the cultivator tied behind the tractor and in this manner, mother of the petitioner was killed by the accused persons.

After completion of the investigation, report under Section 173 Cr.P.C. was submitted and this report was submitted against one person i.e. accused Rohtash son of Ramniwash. It is stated that after collecting the evidence against him, he was arrested and made a disclosure statement that he has committed the offence with the tractor. On his statement, tractor was recovered by the police and samples were sent to FSL, Madhuban. It was stated by Rohtash that the tractor is owned by Dayal Singh and Inder Singh sons of Ramjas and he has taken it for doing agricultural work. It is further stated in the report under Section 173 Cr.P.C. that investigation of the case was carried out by higher police officials and respondents No.3 to 8, in the investigation, were found innocent and therefore, Sections 147 and 149 IPC were deleted.

The trial Court thereafter framed charges against accused Rohtash under Sections 302, 307, 506 IPC and recorded statement of the complainant Neelam as PW1. In the statement of PW1, the statement given before the police was reiterated in verbatim. PW1, in her statement, stated as

below: -

“On 03.03.2017, I along with my mother and bhabhi Mamta went to the field for work. After fulfill the work, we were returned to the house and when we reached near the drain then accused Rohtash, Rajesh and Mukesh and their wives Anju, Usha and Manju and their mother Lichmi came from village side on tractor and the accused gave a lalkara by saying that why Neelam is coming from in this way, run over the tractor to her. Rohtash alighted the other members from the tractor and he chased me with tractor. I saved myself by standing behind a tree and at the same time my mother came to rescue me. Accused Rohtash run over the tractor to my mother and dragged her for a distance of half acre with cultivator and killed her by moving the tractor upwards and backwards. Then my bhabhi Mamta came to rescue my mother and Rohtash also chased her with tractor with intention to kill her. My bhabhi Mamta run towards our house in the village and she closed the door of the house going inside the house. Rohtash accused threatened us by saying that he had to go to jail and he would not leave anybody. Then we informed police about this incident. Police came to the spot and recorded my statement Ex.PA which bears my signature at point-A. I received minor injuries in saving myself and I was medico legally examined.”

Thereafter, the cross-examination of this witness was conducted

by the counsel for the accused Rohtash and an application under Section 319 Cr.P.C. was filed by the complainant on 27.08.2017 praying for summoning respondents No.3 to 8 as additional accused. Reply was filed on behalf of accused Rohtash to this application, pleading that as per the prosecution, only Rohtash, who was driver of the tractor, was arrayed as an accused. The trial Court, vide impugned order dated 14.09.2017, dismissed the application filed by the petitioner.

Learned counsel for the petitioner has submitted that respondents No.3 to 8 were named in the FIR and there is specific allegation that they raised lalkara and only thereafter, Rohtash committed murder of mother of the complainant-petitioner. It is further submitted that no reason has been assigned in the report under Section 173 Cr.P.C. for declaring respondents No.3 to 8 as innocent. Counsel for the petitioner has further argued that while appearing as PW1, the petitioner-complainant has again reiterated the entire version and she being an eye-witness, has given a correct version of the incident, which took place on 03.03.2017, killing the mother of the petitioner.

Learned counsel for the petitioner has further submitted that at the time of deciding an application under Section 319 Cr.P.C., the role attributed to the accused persons, in the FIR as well as in the statement of the prosecution witness, be considered and from the statement of PW1, it is apparent that all the accused persons were nursing a grudge against the complainant party regarding the path in dispute.

In reply, learned State counsel has submitted that while

submitting report under Section 173 Cr.P.C., verification of the investigation was done by the higher police officials and it was found that accused Rohtash alone was driving a tractor and has committed the offence. It is further submitted by the learned State counsel that it has come in the evidence of PW1 that the other accused persons were not sitting on the tractor when the alleged occurrence took place.

Learned counsel for respondents No.2 to 8 has argued that in the statement made by the complainant Neelam to the police, the allegations are only against accused Rohtash that in order to kill her mother, he had run over the tractor 2-3 times and even tried to run over the complainant and her sister-in-law. It is also stated in this statement Ex.PA, forming basis of the FIR that *“In this way Rohtash has attempted to kill me and my sister-in-law/bhabi by running over tractor. We rescued ourselves with difficulty, Rohtash while following us on the tractor was saying that it is definite that he will go to jail but he will not spare us.”* It is thus submitted that in the version given to the police, complainant has levelled direct allegations only against Rohtash.

Learned counsel for respondents No.2 to 8 has further drawn attention of the Court towards deposition of the petitioner Neelam as PW1, where she stated that Rohtash alighted the other members from the tractor and he chased me with tractor. It is submitted that again in the Court, this witness has stated that accused Rohtash, after alighting the other members from the tractor, has first tried to run over Neelam-complainant and then her mother and therefore, no role is attributed to respondents No.3 to 8. Counsel

for respondents No.2 to 8 has relied upon **Hardeep Singh Vs. State of Punjab and others, 2014 (1) RCR (Criminal) 623**, wherein the Hon'ble Supreme Court has held as under: -

“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 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.”

It is thus submitted on behalf of respondents No.2 to 8 that the

trial Court has rightly dismissed the application under Section 319 Cr.P.C. filed by the petitioner, as the trial Court has held that the investigation carried out by the investigating agency do not appear to be untruthful from any angle.

After hearing learned counsel for the parties, I find no merit in the present petition for the following reasons: -

(a) The Hon'ble Supreme Court in **Hardeep Singh's** case (supra) has held that the degree of satisfaction for summoning a person under Section 319 Cr.P.C. would be the same as for framing the charges but the satisfaction of the Court is to be based on opinion of the trial Court that some other persons were also involved in the commission of offence. Not only prima facie case is to be established from the evidence led before the Court, but the material, which has come in the form of the statement, should be sufficient for framing of charge. In the present case, there is no sufficient evidence led by the petitioner in this regard.

(b) A perusal of the report under Section 173 Cr.P.C. shows that the same was verified by the higher police officials and as per the statement given by the complainant herself Ex.PA, on the basis of which, FIR was registered, it is stated that accused Rohtash has attempted to kill her and her sister-in-law by running over the tractor and had killed her mother after running over the tractor 2-3 times. Nothing has been alleged in the present petition or in the application filed by her under Section 319 Cr.P.C. that the investigation carried out by the police was defective in any manner.

(c) In the deposition of the petitioner, which is in verbatim same as her statement made before the police, she has even further stated that

accused Rohtash alighted the other members from the tractor and then he chased her with the tractor. Thereafter, she ran away to save her life and accused run over the tractor on her mother and dragged her for a distance of half acre with the cultivator attached to the tractor and killed her by moving the tractor upwards and backwards. In this manner, it is not stated by PW1 that respondents No.3 to 8 were sitting on the tractor or had committed the crime.

(d) It has come on record that there was a grudge in the mind of the complainant-party over taking the crop from the field of father of the complainant and therefore, possibility of implicating all the family members of the accused Rohtash in committing the crime, cannot be ruled out, as rightly held by the trial Court.

On re-appreciation of the report under Section 173 Cr.P.C. and statement of PW1, I find that the trial Court has rightly dismissed the application under Section 319 Cr.P.C., holding that since the powers under Section 319 Cr.P.C. are to be exercised sparingly, in the circumstances, so warrant, the summoning of respondents No.3 to 8, on the basis of material available on record, is not justified.

In view of the above, this petition is dismissed.

[ARVIND SINGH SANGWAN]
JUDGE

19.02.2018
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No