

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

Crl. Revision No.1066 of 2018(O&M)
Date of Decision: October 17, 2018

Rajender Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Deepak Girotra, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, AAG Haryana.

Mr. Manoj Tanwar, Advocate
for respondents No.3 to 6.

JAISHREE THAKUR, J.

1. The instant criminal revision has been filed against the order dated 16.02.2018 whereby the application filed by the petitioner under Section 319 of Code of Criminal Procedure (for short 'Cr.P.C.') for summoning respondents No.3 to 6 herein as additional accused in FIR No.178 dated 10.05.2016 registered under Sections 498-A, 306 of Indian Penal Code at Police Station Kharkhoda, Sonipat has been dismissed.

2. In short, the aforesaid FIR came to be registered by the petitioner-complainant alleging therein that his daughter Rajesh (since deceased) who was married to Ravi, resident of Village Gopalpur has been burnt and killed by her husband and other in-laws. It is alleged that the

husband and other in-laws of the deceased used to maltreat and beat her on account of demand of money and for not asking for a share in his land. After investigation, challan was presented by the investigating agency, only against accused Ravinder @ Ravi i.e. respondent No.2 herein, however, respondents No.3 to 6 were placed in column No.2. The petitioner-complainant filed an application under Section 319 Cr.P.C. for summoning respondents No.3 to 6 as additional accused, which application came to be dismissed by the impugned order dated 16.02.2018, which is under challenge in the instant criminal revision.

3. Learned counsel appearing on behalf of the petitioner-complainant argues that the petitioner while appearing in the witness box as PW1, has specifically named respondents No.3 to 6 and reiterated the averments of the complaint. It is also argued that the trial court has dismissed the application by saying that the statement of the complainant is not sufficient to summon the additional accused. It is contended that the trial court has failed to appreciate that it is the consistent stand of the petitioner from the beginning that respondents No.3 to 6 are also involved in the commission of the crime, however, the the police due to shoddy investigation placed them in column No.2.

4. Learned counsel appearing on behalf of respondents No.3 to 6 argues that the complaint filed by the complainant is tutored one and no particular role has been attributed to them. It is contended that the eye-witnesses got recorded their statements that no body was present in the house of the deceased at the time of occurrence. It is also argued that respondents No.3 and 4 are residing separately from the past many years

with their children, after the family partition. It is submitted that respondents No.5 and 6 are also residing separately with respondents No.3 and 4 and there was no occasion for them to interfere in the matrimonial life of respondent No.2 and the deceased, who were married in the year 2000.

5. I have heard learned counsel for the parties and with their assistance have pursued the case file.

6. The law is now well settled as regards summoning a person as an additional accused under Section 319 Cr.P.C. The power to summon a person as an additional accused is undisputed, but the same has to be exercised sparingly, with caution, and to be exercised in order to ensure that the culprit does not get away. In ***Hardeep Singh v. State of Punjab, (2014)***

3 SCC 92 the Constitution bench of the Supreme Court held:

“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 un rebutted, 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.”(emphasis supplied).

7. The Supreme Court in **Brijendra Singh and others vs. State of Rajasthan (supra)** while summing up the ratio as laid down in **Hardeep Singh's case (supra)** held:

“Power under [Section 319 Cr.P.C.](#) can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some ‘evidence’ against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The ‘evidence’ herein means the material that is brought before the Court during trial. Insofar as the material/ evidence collected by the IO 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.](#) No doubt, such evidence that has surfaced in examination-in-chief, without cross- examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under [Section](#)

319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom chargesheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.”

8. In the instant case, marriage of the deceased was solemnized with respondent No.2 Ravinder @ Ravi in the year 2000 and the alleged occurrence took place on 09.05.2016. During the course of investigation, respondents No.3 to 6 were found to be innocent and they were kept in column No.2. The petitioner-complainant earlier filed an application under Section 193 Cr.P.C. seeking summoning of respondents No.3 to 6 as an additional accused, which application came to be dismissed by the trial court by an order dated 05.06.2016. After that, statement of the petitioner-complainant was recorded as PW1, in which he reiterated the allegation as levelled in the FIR. It is thereafter, that an application under Section 319 Cr.P.C. came to be filed, which came to be dismissed by the trial court by the impugned order dated 16.02.2018, while observing as under:-

“16. The complainant in his testimony on oath as PW1 has also reiterated the similar version as stated in the FIR whereas, during investigation, the allegations levelled against Virender son of Har Lal, Santosh wife of Virenders, Sahbor wife of Har Lal and Har Lal son of

Sher Singh were not found true and the persons mentioned in the application were found innocent. The record shows that initially the FIR under Section 498-A, 302 of IPC was registered and during investigation, Section 302 IPC was deleted and Section 306 IPC was added. It is also recorded in the challan report that in the investigation by the Investigating Officer and verification by the Deputy Superintendent of Police, Virender son of Har Lal, Santosh wife of Virender, Sahbor wife of Har Lal and Har Lal son of Sher Singh were found innocent and the allegations levelled against them were found false. No new evidence has been collected thereafter and no new evidence has come on record after presentation of challan.

17. An application under Section 193 Cr.P.C. was also moved on 05.08.2016 by complainant for summoning Virender son of Har Lal, Santish wife of Virender, Sahbor wife of Har Lal and Har Lal son of Sher Singh as additional accused in the case for the purpose of facing trial along with accused already arraigned and after considering the evidence available on record including the statements of witnesses recorded during investigation under Section 161 Cr.P.C., the application under Section 193 Cr.P.C. was dismissed vide order dated 05.09.2016. After decision of the application under Section 193 Cr.P.C., the statement of complainant Rajender was recorded as PW1 and no other, new or fresh evidence has been collected. The statement of the complainant is not sufficient to summon Virender son of Har Lal, Santosh wife of Virender, Sahbor wife of Har Lal and Har Lal son of Sher Singh as additional accused as their complicity in the offence is not prima facie made out with the evidence available on

record and no substantive evidence exists against Virender son of Har Lal, Santosh wife of Virender, Sahbor wife of Har Lal and Har Lal son of Sher Singh, which would warrant their prosecution with a good chance of conviction.

18. In view of the abovesaid, the application under Section 319 Cr.P.C. is devoid of any merit and is hereby dismissed.”

9. In the FIR, the petitioner-complainant has specifically alleged that *Ravinder used to ask to bring money and share in their land. These days, the daughters are also getting shares in the father's property. I have 18 kanals land and her share comes to be more than 3 kanals and rates are more than 1 crore per killa. She is entitled for Rs.50 lacs as share. Ravinder has a dairy and does the business of selling milk and he said that he wanted to create his business.* There are general allegations that have been levelled against respondents No.3 to 6, who were residing separately from the deceased and Ravinder. Respondents No.3 to 6 were found to be innocent that was conducted by the Investigating Officer and further verified by the Deputy Superintendent of Police. At this stage, even if it is presumed that the deceased was being harassed to get her share in her father's property by Ravinder, even then it is Ravinder the husband, who would be benefitted by that. The earlier application moved under Section 193 Cr.P.C. was dismissed by holding that there are statements of the witnesses qua the fact that they have received information that deceased Rajesh was killed by her in-laws, but none of the witness has specifically stated the names of family members, who killed her. Under Section 319

Cr.P.C. the degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge-sheet was filed. Only where strong and cogent evidence is available against a person from the evidence led before the Court, it is only then such power under Section 319 Cr.P.C. should be exercised.

10. Therefore in view of the foregoing discussion and ratio of law, this court does not find any illegality or infirmity in the impugned order so passed. As such, the instant criminal revision is hereby dismissed, being devoid of any merits.

11. Anything observed or said by this court is only for the purpose of deciding the instant criminal revision and shall have no bearing on the merits of the case.

October 17, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No