

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

CRR-1552-2018 (O&M)

Date of Decision: 03.05.2018

Ram Niwas

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Satyajeet Malik, Advocate
for the petitioner(s).

ANITA CHAUDHRY, J

CRM-15803 of 2018

The instant application has been filed under Section 5 of the Limitation Act for condonation of delay of 20 days in filing the appeal.

In view of the reasons mentioned in the application, delay of 20 days in filing the appeal is condoned.

Application stands disposed of.

CRR-1552-2018

The petitioner has challenged order dated 06.01.2017. The application filed by him for summoning the additional accused has been dismissed. The petitioner's daughter-Rekha was married to Ravinder in the year 2015. Allegations are that Ravinder used to beat Rekha under the influence of liquor for bringing insufficient dowry. Allegations were also made that the father-in-law and mother-in-law used to harass and beat her. Rekha gave birth to a daughter 6 months before the incident. The in-laws harassed her for giving birth to a girl child. Rekha was thrown out of the

house and she remained there for 3-4 months. A month before the incident, Ravinder and his father and Balwinder came to take Rekha. The complainant received a call that his daughter had died. The complainant blamed the husband, mother-in-law, father-in-law, brother-in-laws and sister-in-laws.

The police filed the challan only against the husband.

The trial had begun and the statement of the complainant was being recorded when an application was moved for summoning the additional accused namely the father-in-law, mother-in-law, brother-in-laws and sister-in-laws.

The trial Court dismissed the application holding that the proposed accused were not staying with Rekha and her husband. The trial Court considered the documents annexed with the challan.

The counsel for the petitioner referred to the statements of Ram Niwas. The submission is that the complainant had named all the accused but the police had challaned only the husband and he had named them in his statement recorded as PW-1 and the Court had ignored the principles laid down in '**Hardeep Singh Vs. State of Punjab, 2014(2) SCC (Crl.) 86**'. Counsel for the petitioner contends that the statement of Govind Member Panchayat was available on record and he had disclosed to the police that respondents No.4 and 5 were staying together and the trial Court has not taken into account the ration card and the reply to the RTI application which shows that 15 members were staying together in House No.271. Counsel further urges that they have placed on record the photographs of the dead body which would show that there were injuries and the girl had been murdered. The counsel also refers to the postmortem report.

I have gone through the documents placed on record by the petitioner today as well as the postmortem report.

The case of the petitioner is that his daughter had been murdered. The postmortem report shows bluish discoloring was present on the neck upper chest and the right arm. There is one injury which is a abrasion on left side of the forehead. The cause of death was kept pending to await result of the FSL report. The injury is not stated to be the cause of death. It is necessary now to refer to the judgment of Constitutional Bench rendered in '**Hardeep Singh Vs. State of Punjab, 2014(3) SCC 92**' and the relevant paragraph reads as under:-

“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.

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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.”

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. The Constitution Bench 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 trial Court had gone through the statements led before it and doubted the version and went through the evidence collected by the Investigating Officer and found that the rest of the family were living separately. The police could not collect any material which could point towards the complicity of the remaining persons. The complainant has not given any additional evidence which can point towards their involvement. The test as laid down in *Hardeep's* case after applied to the present case, it is found that the complainant had failed to lead evidence which was more than *prima facie* case. The complainant was expected to lead much stronger evidence than mere probability. Since that evidence is missing, I find no illegality in the order.

The petition is dismissed in *limine*.

May 03, 2018

ps-I

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No