

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

**Crl. Revision. No. 1804 of 2018 (O&M)
Date of decision : 21.05.2018**

Devender Singh

.....Petitioner(s)

Versus

State of Haryana

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. I.S. Pabla, Advocate
for the petitioner.

ANITA CHAUDHRY, J.

This revision is directed against the order dated 20.04.2018, passed by the Additional Sessions Judge, Jhajjar who dismissed the application filed under Section 319 Cr.P.C.

Ravita (since deceased) was married to Naveen on 28.03.2015. Ravita died at her parent's house on 25.03.2016. The allegations levelled in the FIR were that the girl had been harassed and she was turned out of the house after a beating. The complaint was lodged by the brother. According to him Ravita had returned to her parental home on 25.03.2016. He had also stated that the girl was tense for the last two days and she committed suicide and had consumed Sulphas.

The police found the mother-in-law and the father-in-law innocent and challan was presented only against Naveen.

At the trial, the prosecution examined Davinder (PW-1) who reiterated the allegations made in the complaint. Thereafter, an application under Section 319 Cr.P.C. was moved, which has been dismissed by the trial Court. Para 8 of the order details the reasons for dismissal and they read as under:-

“8. After hearing the rival contentions, this Court is of a view that no specific allegation of dowry demand has been levelled either against father-in-law Ram Karan or mother-in-law Shakuntala of deceased Ravita. It is also not disputed that Ravita died in her parental house. There is nothing on the file to show as to how Ravita managed get Salphas tablet. The statement of Ravita's sister Ekta and Ravita's brother Yogesh under Section 161 Cr.P.C. shows that Ravita came to her parental house on 18.3.2016 and not on 25.03.2016 as has been stated by the complainant in his complaint Ex. PW14/A. The statement of Yogesh, Ravita's brother under Section 161 Cr.P.C. also shows that Ravita used to reside in Gurgaon with her husband Naveen.”

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 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 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.

It is not in dispute that the incident had occurred when the girl was at her parent's house. On going through the statements recorded under Section 161 Cr.P.C., which are part of the challan. The trial Court noted that Bijender in his statement under Section 161 Cr.P.C. had stated that on 18.03.2016 the girl had appeared for her C-Tet examination in Noida and her father had brought her to his house and she had not openly not disclosed anything and she consumed Sulphas as she was harassed by the in-laws.

The trial Court had noted that Ravita's sister Ekta as well as the brother Yogesh in the statement under Section 161 Cr.P.C. had mentioned that the girl had returned to her parent's house on 18.03.2016. It had also appeared in the statements that Ravita used to reside in Gurgaon with her husband. There were no specific allegations against the in-laws and sweeping allegations had been levelled. The police had made an inquiry but did not find the involvement of the mother-in-law and the father-in-law and had placed their names in column no.2. The complainant had failed to produce any additional material which was more than a *prima facie* evidence to establish their involvement. In the absence of such evidence, the Court had rightly refrained from exercising the power under Section 319 Cr.P.C. There is no reason to take a different view.

The petition is dismissed in limine.

21.05.2018

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(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No