

CRR-4864 of 2017 (O&M)

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

CRR-4864 of 2017 (O&M)
Date of Decision: 09.07.2018

Khawaish Batra (minor)

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Bipan Ghai, Sr. Advocate, with
Mr. Paras Talwar, Advocate, for the petitioner.
Mr. Yashwinder Singh, DAG, Haryana.

RAMENDRA JAIN, J. (ORAL)

Through this revision petition, challenge has been laid to order dated 28.10.2017 of learned Additional Sessions Judge, Yamuna Nagar, whereby petitioner has been summoned as an additional accused under Section 319 Cr.P.C. upon application of the prosecution, in case FIR No.637 dated 21.09.2016 registered under Sections 302, 506, 120-B, 201, 404, 203 and 121 IPC at Police Station City Jagadhri, District Yamuna Nagar.

According to the prosecution story, mother of the petitioner, namely, Priyanka Batra @ Priya got murdered her husband Yogesh Batra with the help and connivance of her paramour Rohit Kumar @ Maddi and two others, namely, Satish Kumar and Shyam Sunder @ Sonu, hired for the said purpose.

Learned counsel for the petitioner *inter alia* contends that during investigation, complainant Subhash Chander Batra did not attribute any role to the petitioner. Even Investigating Officer, during investigation, did not

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find any role or complicity of the petitioner in the commission of murder of her father. At any stage till date i.e. filing of final report under Section 173 (2) Cr.P.C., framing of charge, recording of statement of PW1 Surinder Kumar, before whom Rohit Kumar @ Maddi had made extra-judicial confession, name of the petitioner did not figure anywhere. There is no *iota* of evidence against the petitioner about her complicity in the murder of her father. Therefore, the impugned order summoning the petitioner as additional accused is patently illegal and wrong and is liable to be set aside.

On the other hand, learned State counsel, assisted by learned counsel for the complainant, vehemently opposing the submissions of learned counsel for the petitioner, contends that from the following four circumstances complicity of the petitioner in the murder of her father is proved beyond any shadow of doubt: -

- (i) According to the call details, at the time of murder of Yogesh Batra in the intervening night of 27/28.05.2016, petitioner on the first floor of the house was talking with her mother on the ground floor, when she with her co-accused was engaged in the commission of crime of committing murder of her husband, which shows that she was acting as a watchman of the house.
- (ii) Petitioner had accompanied her mother in the Innova car to the railway station, Yamuna Nagar from where two hired co-accused, namely Satish Kumar and Shyam Sunder @ Sonu and her paramour Rohit Kumar @ Maddi were picked up and brought to the house for committing murder of Yogesh Kumar.
- (iii) In the application moved by co-accused Shyam Sunder @ Sonu before the trial Court expressing his desire to become approver, in case he is pardoned, he has mentioned the name of the petitioner as a conspirator.
- (iv) In the photographs taken on 23.07.2016 after two months of

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the murder of Yogesh Batra, which are annexed with the reply, the petitioner is seen in a happy mood with her mother and her paramour Rohit Kumar @ Maddi, which fact is sufficient to show that the petitioner was not sad for the murder of her father.

Pointing out the above four circumstances, learned State counsel has pleaded the legality and validity of the impugned order.

In support of his contentions, learned counsel for respondent No.2-complainant relied upon ***Suman v. State of Rajasthan and another, 2009(4) R.C.R.(Criminal) 908 (S.C.)*** and ***Michael Machado and another v. Central Bureau of Investigation and another, 2000(2) R.C.R.(Criminal) 75.***

Having given considerable thought to the submissions made by both the sides, I find merit in the instant petition for the reasons to follow.

PW1 Surinder Kumar, who is star witness of the prosecution, the entire prosecution story revolves around his statement before the police and then in Court. He did not ever name the petitioner in any capacity i.e. as a conspirator or accomplice or her active participation at the time of committing murder of Yogesh Batra.

The police, during investigation, did not find any complicity of the petitioner, despite collecting and verifying the call details in between the petitioner and her mother on the date of incident.

Conversation of the petitioner from first floor of the house with her mother on the ground floor on the date of incident on mobile phone by in itself is not sufficient to draw inference about her complicity in the murder of her father, in view the fact that a daughter and a mother usually

talk even in the wee hours of the day or night when they are awake. The police did not collect any conversation, whereby role of the petitioner could

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be termed as a conspirator with her mother in the murder of her father. Rather presence of the petitioner on the first floor at the time of murder of her father on the ground floor shows that she had no role in the commission of crime. The petitioner must have been on the ground floor at that crucial moment, had she been a participant in the murder.

In the application filed by co-accused Shyam Sunder @ Sonu before the trial Court he has not specified or attributed any role to the petitioner rather has simply mentioned the name of petitioner as co-accused, being daughter of main accused Priyanka Batra. From the wholesome reading of the said application, it cannot be gathered by any stretch of imagination that co-accused Shyam Sunder has raised any finger against the petitioner for her complicity in the crime.

That apart, the application aforesaid has lost its significance inasmuch as after two-three dates, co-accused Shyam Sunder withdrew the same by engaging new counsel, stating that he never filed any such application, rather his signatures were obtained on a blank paper.

Judicial note of the fact can be taken that the petitioner at the time of incident was aged around 16 years and 02 months. Such a girl of tender age does not properly understand her good or bad fully. Therefore, any child of such age can be manipulated by her mother. A child of such age can safely be presumed as innocent unless otherwise proved.

The trial Court did not go deep into the evidence adduced by the prosecution before it or collected by the police before summoning the petitioner as additional accused, ignoring the fact that application of the prosecution was based on hypothetical and imaginary facts without any

cogent and convincing evidence.

The trial Court also lost sight of the fact that the petitioner is a

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student of 10+2 at Welham School, Dehradun and her summoning as additional accused would spoil the career of an innocent girl.

Even the complainant, who is none else, but father of deceased Yogesh Batra, who set criminal law into motion by lodging the FIR after four months, never named the petitioner. Had there been any complicity of the petitioner, the complainant would have been the last person not to name the petitioner.

Hon'ble Supreme Court in the latest judgment in ***Brijendra Singh and others v. State of Rajasthan***, AIR 2017 Supreme Court 2839 has referred the judgment of ***Hardeep Singh v. State of Punjab and others***, AIR 2014 SC 1400, wherein the Hon'ble Supreme Court has held as under: -

“105. Power under Section 319 Cr.P.C. is a discretionary and an extra- ordinary 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 Cr.P.C. In Section 319 Cr.P.C. 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

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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 Cr.P.C. to form any opinion as to the guilt of the accused.”

Facts and circumstances of the judgments relied upon by learned counsel for respondent No.2 are distinguishable from the facts and circumstances of the instant case, therefore, no benefit of the same can be given to the complainant.

In view of the discussion made above, petition is allowed. Consequently, impugned order is set aside.

July 09, 2018
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No