

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

CRR No.782 of 2017

Date of decision: 13th November, 2018

Suresh Kumar Sharma

... Petitioner

Versus

State of Haryana & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Rajesh Lamba, Advocate for the petitioner.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for respondent No.1/State.

Mr. Mukesh Rao, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

This is a revision petition of petitioner Suresh Kumar Sharma by virtue of which with the aid of Section 402 Cr.P.C. he has challenged an order of the Court of learned Additional Sessions Judge, Gurgaon dated 07.01.2017 summoning the present petitioner, besides others who are not party to this petition, by exercise of powers under Section 319 Cr.P.C. as additional accused.

Heard Mr. Rajesh Lamba, Advocate for the petitioner; Mr. Munish Sharma, Asstt. Advocate General, Haryana representing respondent No.1/State; Mr. Mukesh Rao, Advocate on behalf of respondent No.2 and perused the records.

A case titled 'State vs. Bhupender' bearing FIR No.334 dated 01.06.2016 under Sections 498A, 304B, 302 IPC pertaining to Police

Station Sector 5, Gurgaon was pending trial before the Court of learned Additional Sessions Judge, Gurgaon wherein accused Bhupender was facing trial and other persons namely Hari Kishan, Bimla, Suresh and Suman who were found innocent during investigations, had been left out. It is on the application of the complainant Vishnu moved under Section 319 Cr.P.C. that the impugned order dated 07.01.2017 was passed whereby the Court allowed the application qua present petitioner Suresh as well as non-applicants Bimla and Hari Kishan and summoned them as additional accused, whereas application qua Suman was dismissed.

At the trial, the prosecution examined complainant Vishnu as PW-1 who in his testimony reiterated the allegations spelt out in the FIR and attributed role to Suresh, Bimla and Hari Kishan in commission of the offence of murder of the deceased Rekha. On the basis of this statement, the application under Section 319 Cr.P.C. was moved and hence the order.

The various pronouncements of different courts including the Hon'ble Supreme Court have held that exercise of powers under Section 319 Cr.P.C. are discretionary in nature and need to be judiciously exercised sparingly where there is prima facie substantial evidence of cogent nature to establish commission of offence by a person. In the present case, as has been contended and not refuted by the counsel for the two sides, names of these persons figure in the FIR and it is during investigations certain accused persons have been left out. The testimony

of PW-1 has brought about accusations against these persons who were there at the first point of time when the FIR was got registered by him. Since Rekha deceased was married to Bhupender on 25.07.2015 and she died in her matrimonial home by an unnatural death on 31.05.2016 and it has come that at the time of her death an electric wire was encircling her neck and her hands, legs and mouth were tied by means of a tape and therefore, leads to irresistible conclusion that death of Rekha certainly has taken place and which is harbouring on the fringe of murder.

The law as on date is well enshrined, reference of which can be taken note of the ratio laid down in '**Hardeep Singh v. State of Punjab**' 2014(1) RCR (Criminal) 623, wherein Hon'ble the Apex Court has observed as follows:-

“79. The word “evidence” therefore has to be understood in its wider sense both at the stage of trial and, as discussed earlier, even at the stage of inquiry, as used under Section 319 Cr.P.C. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it. The duty and obligation of the court becomes more onerous to invoke such powers cautiously on such material after evidence has been led during trial.

80. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by

the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 Cr.P.C. The 'evidence' is thus, limited to the evidence recorded during trial."

Since sufficient evidence as per the testimony of PW-1 has come, together with the fact that the deceased at that time was pregnant and had delivered a dead female child on account of abortion induced by physical torture a few days prior to this unfortunate death of Rekha and has placed on record photographs of the deceased. Learned counsel for the petitioner could not convince this Court as to how or by what means there has been wrong exercise of powers under Section 319 Cr.P.C. necessitating intervention by this Court. The order under assail is perfectly in accordance with law and needs to be upheld. The revision petition being hopelessly without merit, stands dismissed.

(FATEH DEEP SINGH)
JUDGE

November 13, 2018

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No