

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

CRR-2989 of 2018
Date of Decision:07.09.2018

Nachhatar Kaur

....Petitioner

Versus

State of Haryana & ors..

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Namit Khurana, Advocate, for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Through this revision petition, the complainant has assailed order dated 04.05.2017 of learned Additional Sessions Judge, Ambala (trial Court, whereby her application under Section 319 Cr.P.C for summoning respondents No.2 to 4 as additional accused, was dismissed.

Briefly, in the night of 15.08.2016, on asking of respondent No.3, when the complainant was removing the wire from her roof top, accused Sahil (facing trial) started abusing complainant and threw stone at her. At that time, both of them were under the influence of liquor. On request of the complainant not to abuse and throw stone at her, both of them ran away from the spot abusing her. An hour thereafter, respondent No.3 came to the house of the complainant and asked her that they should not quarrel being neighbours of each other. After about 10 minutes, accused Sahil along with his wife also reached to the house of complainant. On asking, complainant was narrating the incident to wife of accused Sahil. During this process, accused Sahil got endangered, whereupon complainant asked them to leave her house. In the meantime, husband of the complainant, namely, Suresh Kumar also returned home and asked accused Sahil as to why he had come

late night to his house, whereupon Sahil took out a knife and caused several injuries on left side of chest, left shoulder, left ear, wrist of left hand and left side of waist of Suresh Kumar. As result thereof, Suresh Kumar succumbed to his injuries. On raising alarm, nephew of the complainant namely Baldev and one Raj Kumar reached the spot. In the process of saving her husband Suresh Kumar, accused Sahil also gave knife injuries on thumb of right hand of the complainant, besides, causing injuries on the hand of her daughter Isha and head of her nephew Baldev. On these broad allegations, FIR was registered.

During investigation, complainant, her daughter Isha, nephew Baldev and one Raj Kumar made supplementary statements disclosing the involvement of three more persons, namely, Ankush, Rajesh and Harry @ Robin in committing the murder of her husband Suresh Kumar and causing injuries to them. However, during investigation, the aforesaid persons were found innocent. Therefore, the final report under Section 173 (2) Cr.P.C was filed only against accused Sahil.

After chargesheeting accused Sahil under Sections 302/323/452 IPC and Section 3 of Scheduled Caste and Scheduled Tribe(Prevention of Atrocities) Act, 1989, complainant appeared as PW-1 and testified about the complicity of aforesaid three persons, namely, Ankush, Rajesh and Harry @ Robin in the commission of murder of her husband Suresh Kumar and immediately through public prosecutor, got moved application under Section 319 Cr.P.C for summoning the aforesaid persons as additional accused, which has been dismissed vide impugned order dated 04.05.2017.

Learned counsel for the petitioner *inter alia* contends that the petitioner as PW-1 specifically named Ankush, Rajesh and Harry @ Robin

as murderers of her husband with co-accused Sahil (facing trial) sought to be summoned under Section 319 Cr.P.C as additional accused. Therefore, learned trial Court ought to have summoned them, considering the fact that it was premature to declare the aforesaid persons innocent without appreciation of evidence at final stage. In their supplementary statement, also the complainant, her daughter Isha, nephew Baldev and one Raj Kumar had specifically named the aforesaid persons for committing the murder of her husband. The learned trial court has erred in dismissing the application of the prosecution under Section 319 Cr.P.C.

Having given thoughtful consideration to the submissions made by learned counsel for the petitioner, I find that the instant petition is completely devoid of any merit for the reasons to follow:-

Instant petition has been filed after a delay of 1 year and 3 months of passing of the impugned order for the reasons best known to the petitioner. Had the complainant been aggrieved by the impugned order, she must have approached this Court, immediately within a reasonable time.

In her initial statement under Section 161 Cr.P.C., on the basis of which FIR was registered, the petitioner did not name aforesaid persons, namely, Ankush, Rajesh and Harry @ Robin, now sought to be summoned as additional accused. Her daughter Isha, nephew Baldev and alleged eyewitness also did not show the presence of the aforesaid persons at the time of occurrence. However, during investigation, the petitioner, her daughter Isha, nephew Baldev and Raj Kumar named the aforesaid persons as co-accused of Sahil in their supplementary statements.

The petitioner took the plea that immediately after the occurrence, since her husband was murdered, therefore, she was not in fit state of mind

and thus, could not disclose names of all the culprits. This plea of the petitioner would have been worth consideration, had the other three persons namely, Isha, Baldev and Raj Kumar named the aforesaid persons in their initial statement under Section 161 Cr.P.C as culprits for committing the murder of Suresh Kumar.

No explanation has come forward from the side of prosecution as to why Isha, Baldev and Raj Kumar in their initial statements under Section 161 Cr.P.C remained silent about the role of Ankush, Rajesh and Harry @ Robin. Therefore, it can safely be presumed that after due deliberations, in their supplementary statements, complainant, her daughter, nephew and Raj Kumar, showed the complicity of aforesaid persons with malafide intention, which during investigation, were found false. It is well settled that powers under Section 319 Cr.P.C have to be used very sparingly and not in routine.

In view of discussion made above, complicity of Ankush, Rajesh and Harry @ Robin is doubtful. Therefore, this Court is not inclined to differ with the findings recorded by the trial Court, while rejecting application of the petitioner under Section 319 Cr.P.C vide impugned order dated 04.05.2017.

Dismissed.

07.09.2018

monika

Whether speaking/reasoned
Whether Reportable

(RAMENDRA JAIN)
JUDGE

Yes/No
Yes/No