

fields and were demanding Rs.3 lacs, failing which they threatened him to involve in a false case of rape.

On 24.7.2015 at about 7.00 a.m. Sudesh and his son Mohit came to their house and raised a quarrel with the complainant, her son Ankush and husband, thereafter, they took her husband towards the fields. When the complainant and her son were going to inform the police, her brother-in-law Sunil @ Bhiru met them at the Bus Stand of the village and informed that her husband Sammat has taken some poisonous substance. When the complainant reached in the fields and found her husband to be lying unconscious and was taken to hospital where he was declared brought dead.

The police, after registration of the FIR, conducted the investigation and submitted the report under Section 173 Cr.P.C. against Sudesh wife of Rajesh, whereas her son co-accused-Mohit (respondent No.2) was found innocent by the police.

After the complainant examined herself as PW2, she moved an application under Section 319 Cr.P.C. In the application (Annexure P-2) it is stated that despite of attribution of specific role to Mohit, the police has not submitted the challan and in view of the statement of the complainant, who has reiterated the version given in the FIR, Mohit be also summoned as an additional accused.

Reply on behalf of Sudesh, who was facing the trial, was filed and the application was contested. It was stated in the reply that police thoroughly investigated the case and found that Mohit was innocent. It is further stated that complainant-Babli Devi, while appearing before the Court

as PW2 has improved the prosecution version as given in the original complaint and her statement under Section 161 Cr.P.C. It is also stated that no date, month or time was given in the application regarding committing of the offence and as per whole version of the complainant, Mohit was not present at the spot and he was not attributed any injury. It is also stated that there was no dying declaration of the deceased and Mohit is a juvenile and the application is moved to harass and implicate him in a false case.

The trial Court vide impugned order dated 9.5.2019 dismissed the application. The operative part of the order reads as under :-

“13. After lodging the FIR on the statement of complainant, investigation was carried out. Post-mortem on the dead body of deceased was got conducted. Viscera was sent to FSL and as per FSL report aluminum phosphide was detected in blood, stomach, loops of small and large intestine, parts of liver, spleen and kidney and loose earth along with some stones and vegetative material. The investigation carried out by the investigating officer was verified by Superintendent of Police, Jind, himself but no offence at all was found against Mohit now sought to be summoned and, thus, not challaned.

14. As per FIR version, there are general allegations of giving beatings to deceased, complainant alongwith her son Ankush because no specific role has been attributed either to accused Sudesh already facing trial or her son Mohit, to whom complainant now wants to summon as additional accused. AS per FIR version, before the date of incident i.e. 24.7.2015 Sudesh along with her son

Mohit used to beat the complainant and her husband for the last 7 days in her filed as well as in her house, but when she appeared into witness box as PW2 she has stated that on 7th July, 2015, accused Sudesh and her son Mohit gave beatings to her husband and demanded Rs.3 lacs otherwise threatened him to involve in false case of rape and on the date of incident I.e 24.7.2015 at about 7.00 a.m. accused Sudesh along with her son Mohit gave beatings to deceased complainant and her son Ankush by entering into her house, but it is admitted case that neither complainant nor her son Ankush were medico-legally examined and as post-mortem report or inquest report there was no external or internal marks of injury on any part of the deceased also. If the deceased as well as complainant and her son have been given beatings continuously for 7 days as well as on the date of incident also, then some injuries must have been available on the body of deceased as well as on the complainant and her son Ankush. This shows that complainant has come forward with totally false version regarding causing injury to deceased by Mohit. Moreover, neither in FIR nor in her testimony in the Court complainant has stated on which portion of their body or of deceased injuries were caused and with which weapon. Further, complainant has not led any new evidence on record in addition to which is already collected by police. The facts which she has stated in her testimony, have already been verified by Superintendent of Police, Jind during investigation. Thus, it is clear that there is no new evidence on record, which prima facie shows complicity of Mohit.

In the aforesaid judgments, it is repeatedly held that power under Section 319 Cr.P.C. is extra-ordinary power,

which has to be used very sparingly and not as a tool in the hand of complainant or not merely on the asking of complainant. Legislation has not given power as handle at the hands of complainant to cause harassment to the persons, who are not involved in the commission of crime. Hon'ble Supreme Court in Sarabjit Singh's case (supra) has held that power under Section 319 Cr.P.C. has to be used only under compelling circumstances and not merely on suspicion howsoever strong.

16. In view of the evidence led on record what to talk of strong evidence there is not a suspicion regarding complicity of Mohit. Hence, in view of the above discussion, I am of this view that there is no such evidence on file which fulfill the test to invoke the power under Section 319 Cr.P.C. As this Court does not find any merit in the application in hand, the same is hereby rejected.”

Counsel for the petitioner has argued that there is specific allegations in the FIR that Sudesh, who is facing the trial was having illicit relations with the husband of the complainant-deceased Sammat and was extorting money from him. It is also stated that on 24.7.2015, the main accused Sudesh and Mohit gave beatings to the complainant and her husband as well as son Ankush and, therefore, the police has wrongly found him innocent.

In reply, the counsel for the respondent No.2 has argued that in the version given to the police forming basis of registration of the FIR as well as in the statement under Section 161 Cr.P.C., complainant-Babli Devi has stated that one week before the incident, i.e. 24.5.2015 Sudesh along

with her son Mohit used to beat complainant and her husband and on the date of the incident, they came to her house and gave beating to complainant, her husband and son but when she appeared as PW2, it is stated that on 7.7.2015, Sudesh and her son Mohit gave beatings to her husband and demanded Rs.3 lacs, otherwise threatened him to involve him in a false case of rape. Counsel has further argued that though the allegations are that the complainant and her son Ankush were also given beatings but there is no medico-legal report in this regard. Counsel has further argued that there are allegations of PW2 that even deceased Sammat was given beatings but in the post-mortem report no external injuries are reported.

Counsel for the respondent has placed on record the photocopy of the post-mortem report to submit that no external injuries were found, which could reflect that she was given any beating. Counsel for the respondent has relied upon 2019 AIR (SC) 641 Dev Wati Vs. State of Haryana, wherein Hon'ble the Supreme Court has held as under :-

“7. Section 319 (1) of the Cr.P.C. empowers the Court to proceed against other persons who "appear" to be guilty of an offence, though not accused before the Court. A Constitution Bench of this Court in the case of Hardeep Singh v. The State of Punjab, (2014) 3 SCC 92 has ruled that the word "appear" means "clear to the comprehension", or a phrase near to, if not synonymous with "proved", and imparts a lesser degree of probability than proof. Though only a prima facie case is to be established from the evidence led before the Court, it requires much stronger evidence than a mere probability of the complicity of the persons against whom the

deponent has deposed. The test that has to be applied is of a degree of satisfaction which is more than that of a *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, may lead to conviction of the proposed accused. In the absence of such satisfaction, the Court should refrain from exercising the power under Section 319 of the Cr.P.C. In our considered opinion, the impugned judgment has been passed by the High Court keeping the aforementioned principle in mind, though the said judgment has not been cited before the High Court.”

After hearing counsel for the parties, I find no illegality or infirmity in the impugned order passed by the trial Court.

The police has submitted report under Section 173 Cr.P.C. against Sudesh (mother of the petitioner) and she is facing the trial. The petitioner was found innocent as there was no direct evidence against him.

A perusal of the statement of PW2 would show that she has made improvement in the version given to the police and there is no sufficient and cogent evidence which may be termed more than *prima facie* evidence, therefore, no case is made out to summon respondent No.2-Mohit as an additional accused, especially in view of the guidelines of Hon'ble the Supreme Court in the cases of **Hardeep Singh** (*supra*) and **Dev Wati** (*supra*).

This petition sans merit and, accordingly, the same stands dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

April 09, 2019
satish

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No