

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

CRR No.2159 of 2018 (O&M)

Date of Decision: 18.07.2019

Saloni

..... Petitioner

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Mohinder Kumar, Advocate for the petitioner.

Mr. Venu Gopal Jauhar, Sr. DAG, Punjab for respondent No.1.

Mr. Umesh Sharma, Advocate for
Mr. Karanjit Singh, Advocate for respondent No.2.

MAHABIR SINGH SINDHU, J. (Oral)

Present revision petition has been filed under Section 401 of the Code of Criminal Procedure (*for short 'Cr.P.C.'*) against the impugned order dated 23.05.2018, passed by learned Additional Sessions Judge, Gurdaspur, whereby the application under Section 319 Cr.P.C., filed by the prosecution, has been allowed and petitioner was directed to be summoned as an additional accused.

As per the allegations of the prosecution, Jyoti Seth (deceased), brother of complainant-Sajan Seth (PW-1), committed suicide and in the Suicide Note dated 26.07.2016 (Ex.P-1), he named 11 persons responsible for his death on account of the fact that they borrowed money from him, but the same was not returned to the deceased, therefore, fed up with the act of the above persons, he committed suicide.

Learned trial Court, while passing the impugned order, observed that complainant has specifically named the petitioner in the FIR as well as deposed as PW-1 to the effect that she was having illicit relations with the deceased and used to blackmail him.

It is contended by learned Counsel for the petitioner that there is not even whisper of an allegation against the petitioner in the so called Suicide Note, thus, attribution of illicit relationship with the deceased is without any substance and as such, impugned order is not legally sustainable.

On the other hand, learned State Counsel as well as learned Counsel for the complainant, although acknowledged that there is no allegations in the Suicide Note regarding illicit relations of the petitioner with the deceased, but submitted that she has been duly named in the FIR and as such, learned trial Court rightly exercised the jurisdiction while passing the impugned order under Section 319 Cr.P.C.

Heard both sides and perused the paper-book.

Before proceeding further, it is necessary to extract the alleged Suicide Note dated 26.07.2016 (P-1), purported to have been written by the deceased, and which is as under:-

“ I, Jyoti Seth S/o L. Sh. Mohan Lal, am resident of 144-Varindavan Garden, Amritsar. Today I am committing suicide due to the following few persons, who are not returning my money for the last so many years and rather giving threats. Out of them, first is Ashok Kumar Bangana who owes about Rs.6 Lakhs to me (2) Partap, Patti, 98000/- (3) Bittu, Jammu, 275000/- (4) Vivek, Rohru 452000 (5) Kewal, Kiratpur, 176000/- (6) Heera

Singh Putalighar, 95000/- (7) Sai Jewelers, Joginder Nagar, H.P. 342000 (8) Ashwani Soni, Joginder Nagar, I have to take Rs.4 Lakhs from him for my articles and he had taken Rs.7 Lakhs from me when he got constructed hotel but now he is not returning the same. (9) Ashok Veer Ji 594000 (10) Dharam Veer, Dhaneta 317000 (11) Amar Verma, Talwara Rs.46800/-. These persons have not returned my money during my life time. I hope I will get justice after death and my money would be got returned to my family members and these accused persons would be punished also, due to whom I have ended my life. If these persons will return money then the said money be given to my elder daughter Poonam. If I had said anything anytime to my remaining family members then pardon me. Sanju and Rajan, take care of my children.

Yours

Sd/- Jyoti Seth

26/07/16 ”

This Court has gone through the above Note carefully, but perusal of the same nowhere reveals that there is any recital regarding the involvement of the petitioner on account of monetary transaction or of having any illicit relationship with the deceased.

Impugned order itself reveals that on the basis of an enquiry, conducted by the Superintendent of Police (Investigation), petitioner was declared innocent and she was kept in Column No.2 of the report under Section 173 Cr.P.C. Except the oral statement of complainant (PW-1), no material has been brought on record to substantiate the allegation of illicit relationship of the petitioner with the deceased.

Law is well settled by Hon'ble the Supreme Court that for summoning of a person as an additional accused under Section 319 Cr.P.C.,

there should be more than *prima facie* case and reference in this regard can be made to '**Hardeep Singh Versus State of Punjab and others**', (2014) 3 SCC 92 and para 105 & 106 being relevant read as under:-

“105. Power under Section 319 Cr.P.C. 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 unrebutted, 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 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. ”

In the present case, no material has been brought to the notice of this Court to arrive at such a conclusion as held by Hon'ble the Supreme Court in **Hardeep Singh's case (supra)**.

In view of the above, merely on the basis of testimony of PW-1 Sajan Seth (complainant), summoning of the petitioner under Section 319 Cr.P.C. as an additional accused is not legally sustainable and thus, the impugned order dated 23.05.2018, passed by learned Additional Sessions Judge, Gurdaspur, being indefensible, is set aside.

Ordered accordingly.

However, it is clarified that the observations, made above, may not be construed as an expression of opinion on the merits of the case.

July 18, 2019
Gagan

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>