

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

114

CRR-2850-2019(O&M)

Date of Decision:01.11.2019

Kuldip Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Onkar Singh, Advocate,
for the petitioner.

HARI PAL VERMA, J.

Petitioner has filed the present revision petition against the order dated 12.09.2019 passed by learned Additional Sessions Judge, Hoshiarpur, whereby application filed by the prosecution under Section 319 Cr.P.C. seeking summoning of Kirpal Singh son of Parladh Singh, Ravinder Singh son of Parladh Singh, Harbhajan Kaur wife of Pardeep Singh and Salinder Singh @ Monu son of Satpal to face trial along with other co-accused who are already facing trial, was dismissed.

Learned counsel for the petitioner has argued that while appearing as PW1, the petitioner-complainant has specifically stated that the accused Amanpreet Kaur along with other co-accused sought to be summoned had abused him and the deceased in filthy language and humiliated them. The accused have threatened them (complainant and the deceased) in the Panchayat convened regarding the matrimonial dispute of the son of the complainant. The accused have made allegations against the

deceased which were totally defamatory and could not be tolerated. In this manner, they have abetted and instigated the deceased to commit suicide.

Learned counsel for the petitioner has further argued that in the FIR, the police has submitted the challan only against Amanpreet Kaur, whereas the other co-accused sought to be summoned were kept in column No.2 despite there being sufficient evidence against these accused, necessitating the prosecution to move an application under Section 319 Cr.P.C. seeking summoning of these accused. The petitioner while appearing as PW1 and PW2-Santokh Singh have specifically named the accused sought to be summoned in the case. The trial Court had given weightage to the investigation made by the police as compared to the depositions of PW1 and PW2 and dismissed the application filed under Section 319 Cr.P.C. If the satisfaction of the Investigating Officer is treated to be determinative factor then the very purpose of Section 319 Cr.P.C. would be frustrated. Each case has to be decided on its own facts and once evidence has come against the accused, they ought to have been summoned to face trial in the case.

The petitioner when examined as PW1 in her examination-in-chief, has specifically stated that Amanpreet Kaur along other co-accused sought to be summoned had abused them in filthy language and threatened them in the Panchayat convened regarding the matrimonial dispute of the son of the complainant and also in the police station. The accused have made allegations against the deceased which were not tolerable and were defamatory.

Heard learned counsel for the petitioner.

Power to summon an accused is extra-ordinary in nature which

should be used by the Court very sparingly and under compelling reasons and to achieve criminal justice. Court should not pass an order mechanically merely on the plea that some evidence has come on record implicating the respondents. In the case in hand, this Court finds that the allegations as regards the abuses were made in the months of February 2017 and May 2017, whereas the deceased Jaswinder Kaur has left the house on 03.07.2017 and she died on the same day. PW1 has not attributed any overt act on the part of the accused sought to be summoned which could amount to have abetted the commission of suicide by deceased Jaswinder Kaur.

Summoning of an accused is a serious offence. The Hon'ble Supreme Court in ***Pepsi Foods Limited and another Versus Special Judicial Magistrate and others-(1998) 5 Supreme Court Cases 749*** has held as under:-

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

Hon'ble the Supreme Court in ***Rajesh Versus State of***

Haryana-Criminal Appeal No.93 of 2019 (arising out of SLP (Crl.) No.8667 of 2016, decided on 18.01.2019) has held that the allegation of abetment to commit suicide is not sustainable on the mere allegations of harassment without there being any act, action proximate to the time of occurrence, on the part of accused which led or compelled the person to commit suicide. In order to bring the case within the ambit of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person, who is said to have abetted commission of suicide, must have played active role by act of instigation or by doing certain act to facilitate commission of act of suicide.

The basic ingredients of Section 306 of IPC are suicidal death and the abetment thereof, and to constitute abetment, the intention and involvement of the accused to aid or instigate the commission of suicide, is imperative.

In order to bring the case within the purview of Section 306 IPC, there must be case of suicide and in commission of said offence, the person, who is said to have abetted commission of suicide, must have played active role by an act of instigation or by doing certain act to facilitate commission of suicide. No active role has allegedly been played by the respondents, so as to abet the deceased to commit suicide.

Thus, this Court does not find any merit in the instant revision petition.

Dismissed.

November 01, 2019
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No