

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

CRR-3006-2019 (O&M)

Date of Decision:- 14.11.2019

Ramphal

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Amit Khatkar, Advocate for the petitioner.

GURVINDER SINGH GILL, J.

1. The petitioner has approached this Court challenging order dated 15.10.2019 whereby an application filed on behalf of the prosecution under Section 319 Cr.P.C. seeking summoning of Balbir (father-in-law), Kuldeep (brother-in-law) and Suman (sister-in-law) of the deceased, has been dismissed.
2. Learned counsel for the petitioner has submitted that the Trial Court was unnecessarily swayed by the fact that some inquiry had been conducted in the matter by officer of the rank of Deputy Superintendent of Police wherein the aforesaid Balbir, Kuldeep and Suman were found to be innocent.
3. I have heard the learned counsel for the petitioner.
4. A perusal of FIR would show that the FIR came to be lodged at the instance of Ramphal wherein it has been alleged that marriage of his daughter Jyoti had been solemnized on 7.12.2015 with Subhash wherein he had given dowry as per his capacity but his daughter's husband Subhash, brother-in-law Kuldeep, mother-in-law Santosh, father-in-law Balbir and sister-in-law

Suman were not happy with the same and used to harass her daughter and also physically assaulted her. It is alleged that his daughter's husband was continuously demanding a car while father-in-law, mother-in-law and sister-in-law were demanding jewellery and the brother-in-law used to demand cash. Although, the complainant fulfilled their demands several times but the accused kept on subjecting his daughter to physical assault. It is alleged that on 20.3.2019, he received a telephone call from one of his relatives that complainant's daughter was seriously ill and was being taken to Sapra Hospital, Hisar for treatment. When the complainant reached the said hospital, he found that his daughter was dead. The complainant alleged that his daughter had been killed by her husband Subhash, brother-in-law Kuldeep, mother-in-law Santosh, father-in-law Balbir and sister-in-law Suman by strangulation.

5. The matter was investigated by the police and upon investigation, a challan was presented against Subash (husband) and Santosh (mother-in-law) while the respondents namely Balbir (father-in-law), Kuldeep (brother-in-law) and Suman (sister-in-law) were kept in column No. 2.
6. Pursuant to the prosecution getting the statements of PW-1 Ramphal complainant recorded, an application was moved under Section 319 Cr.P.C. seeking summoning of the aforesaid Balbir, Kuldeep and Suman, which was dismissed by the trial Court vide impugned order dated 15.10.2019 passed by Additional Sessions Judge (Exclusive) Court, Bhiwani.
7. The learned counsel for the petitioner has submitted that since specific and categorical allegations have been levelled against Balbir, Kuldeep and Suman in the FIR and which have been reiterated by the complainant when he

stepped into the witness box, a clear case for summoning the said three persons i.e. Balbir, Kuldeep and Suman as additional accused was made out and that as such, the impugned order deserves to be set aside and the application filed by the petitioner under Section 319 Cr.P.C. deserves to be accepted.

8. While considering an application under Section 319 Cr.P.C. the Court is required to be *prima facie* satisfied about the involvement of the persons sought to be summoned as additional accused. The mere fact that some prosecution witness has named some person to be involved in the occurrence may not *ipso facto* be sufficient to summon any other person as an additional accused. Hon'ble Supreme Court in Kailash v. State of Rajasthan and another (2008) 14 SCC 51, while interpreting the scope of Section 319 Cr.P.C, held a person is not to be summoned as an additional accused merely because some witnesses have mentioned his name. The relevant extract reads as follows:

“A glance at these provisions would suggest that during the trial *it has to appear from the evidence* that a person not being an accused *has committed any offence* for which such person could be tried together with the accused who are also being tried. The key words in this Section are "it appears from the evidence"...."any person"...."has committed any offence". It is not, therefore, that merely because some witnesses have mentioned the name of such person or that there is some material against that person, the discretion under Section 319 Criminal Procedure Code would be used by the court. This is apart from the fact that such person against whom such discretion is used, should be a person who could be tried together with the accused against whom the trial is already going on. This Court has, time and again, declared that the discretion under Section 319 Criminal Procedure Code has to be exercised very sparingly and with caution and only when the concerned court is satisfied that some offence has been committed by such person. This power has to be essentially exercised

only on the basis of the evidence. It could, therefore, be used only after the legal evidence comes on record and from that evidence it appears that the concerned person has committed an offence. The words "it appears" are not to be read lightly. In that the court would have to be circumspect while exercising this power and would have to apply the caution which the language of the Section demands.

9. A Constitution Bench of Hon'ble Supreme Court in Hardeep Singh v. State of Punjab and others (2014) 3 SCC 92, while laying down that the power under Section 319 Cr.P.C., 1973 is discretionary and is to be exercised sparingly held as under:-

"105. Power under section **319** CrPC, 1973 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 un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under section **319** CrPC, 1973. In section **319** CrPC, 1973 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** CrPC, 1973 to form any opinion as to the guilt of the accused."

10. Hon'ble the Supreme Court in a recent judgement in 2019(7) SCC 706 Shiv Prakash Mishra vs. State of Uttar Pradesh And Another, has reiterated that the standard of proof employed for summoning a person as an accused person under Section 319 Cr.P.C., 1973 is higher than the standard of proof employed for framing a charge against the accused person.
11. Thus, from the ratio of aforesaid pronouncements, it emerges that the degree of satisfaction required for summoning an additional accused is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge-sheet stands filed. It is only where strong and cogent evidence is there that such power should be exercised. It is not expected to be exercised in a casual or a cavalier manner. It is an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for exercising the same. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.
12. Apart from the aforesaid position of law, the Court is also expected to ensure that provisions of Section 319 Cr.P.C. are not used by the complainant in order to wreak vengeance against the party which has allegedly committed wrong against him. Hon'ble the Supreme Court in 2012(4) RCR(criminal) 812 Geeta Mehrotra and another vs. State of U.P. has observed that there is a general tendency in cases of matrimonial discord to involve the entire family in such cases.
13. In the present case, the trial Court while considering an application under Section 319 Cr.P.C. took into account the fact that no evidence had surfaced

against the accused during investigation. The relevant extract from the impugned order reads as follows :-

“However, the names of the proposed accused persons were even stated by the complainant in his initial complaint and the police after investigation of the matter did not find the proposed accused persons involved in the commission of the alleged offence, in any manner. Not only this, the matter was re-investigated on the complaints of the complainant to various authorities when the police during investigation found that the proposed accused persons were innocent and there was no involvement of them in this case. This investigation was carried out by the officer of the rank of Deputy Superintendent of Police and his report has been taken from the learned counsel for respondents/accused persons during the course of arguments.”

14. The aforestated position shows that the police had satisfied itself before proceeding to file challan against two of the accused while choosing to keep respondents No.2,3 and 4 in column No.2. The matter had been investigated and enquired into by various authorities of the police. The Deputy Superintendent of Police, in his, report, had found no involvement of respondents No. 2,3 and 4. There is no such convincing evidence on record which could suggest complicity of respondents No. 2 to 4 who are father-in-law, brother-in-law and sister-in-law of deceased, so as warrant their summoning with the aid of Section 319 Cr.P.C.
15. In view of discussion made above and while bearing in mind the ratio of *Hardeep Singh's case*, this Court does not find any infirmity in the impugned order declining the application under Section 319 Cr.P.C. and the same is upheld.

16. The revision is sans any merit and is hereby dismissed.

14.11.2019

kamal

(Gurvinder Singh Gill)
Judge

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No