

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

CRR No.1824 of 2018 (O&M)
Date of Decision: 22.01.2019

Ramesh Chand

...Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

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

Present:- Ms. Naveen Malik, Advocate
for the petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

Mr. Tejinder Pal Singh, Advocate
for respondent no.3.

HARI PAL VERMA, J. (Oral)

The petitioner-complainant has filed the present revision petition impugning the order dated 11.04.2018 passed by learned Additional Sessions Judge-cum-Special Court for the Cases of Heinous Crime Against Women, Karnal, whereby the application filed by the petitioner under Section 319 CrPC to summon respondents no.2 to 4, as additional accused, was dismissed.

Vide order dated July 20, 2018, this Court after hearing learned counsel for the petitioner, had issued notice in the case qua respondent no.3-Prem Chand, whereas no ground was made out to issue notice to respondents no.2 and 4. Thus, the present revision petition is confined *qua* respondent no.3-Prem Chand only.

Briefly stated, FIR No.09 dated 12.02.2017 under Sections 304-B, 34, 498-A IPC, Police Station GRP, Karnal was registered on the basis of information received by the railway police that a dead body was lying at the railway track of Village Bhaini Khurd. The Investigating Officer reached the spot, where the dead body of Pooja wife of Pintu was found. The body was identified by Jaswant Pal, uncle/chacha father-in-law of the deceased. Father of deceased Ramesh Chand is the author of the present FIR. As per the version of the complainant in the FIR, his youngest daughter Pooja (deceased) was married with Pintu son of Prem Chand on 05.04.2014 and sufficient dowry was given to her in-laws in the marriage, as per their demands. Pintu was working in ITBP force, posted in Assam and was on vacations since 05.02.2017. Pooja was pregnant for about 5-6 months. She telephoned the complainant a day prior to her death and everything was smooth. The doctor, who examined Pooja, had opined that the child which the Pooja was carrying in her womb was weak. Therefore, the complainant asked Pooja to visit Ambala for consultation at Khurana Nursing Home. However, in the morning of 12.02.2017 at about 8-30 PM, Pintu (husband of the deceased) telephonically informed the complainant that Pooja has died on the railway track, on which, the petitioner-complainant along with his wife Naib Kaur and other family members reached Karnal. The petitioner-complainant raised suspicion on the accused for committing dowry death/murder of Pooja, as the accused had been demanding Rs.1,00,000/- and a car from them. Accordingly, the case was registered. The dead body of the deceased was subjected to post-mortem examination, whereby

possibility of death due to *ante mortem* crush injuries in the railway accident was not ruled out. Thereafter, the body of the deceased was handed over to the family members of the deceased. Accused Pintu was arrested on 14.02.2017. During investigation, challan was presented against Pintu (husband) and Manjit Kaur (mother-in-law) and they were chargesheeted for offence under Sections 498-A/304-B/34 IPC and in alternative, under Sections 302/34 IPC, vide order dated 28.04.2017. After examination-in-chief of PW-5 Ramesh Chand/complainant, the present application under Section 319 CrPC was moved on behalf of the complainant, seeking summoning of respondents no.2 to 4, as additional accused, with the plea that the complainant has attributed specific offences to the proposed accused in his statement Ex.P-18 as well as during his testimony recorded on oath as PW-5, but still, challan has not been presented against these accused. But the said application was dismissed by the trial Court without appreciating the facts, as narrated in the affidavit. Hence the present revision petition.

Learned counsel for the petitioners has argued that the trial Court has not appreciated the examination-in-chief of the petitioner, wherein he has attributed specific roles to the accused sought to be summoned and has arrived at a wrong conclusion while dismissing the application. In the FIR also, the names of these accused were duly mentioned, but the police conducted faulty investigation and did not array them as accused, leaving no other legal remedy for the petitioner except to invoke the provisions of Section 319 CrPC. The Court is empowered to summon even a person who has not been arrayed as accused in the

chargesheet, as additional accused. The trial Court has relied upon the version of the prosecution regarding footage of CCTV, but failed to appreciate the fact that the petitioner, right from the very first day had been submitting that the CCTV footage is not of his daughter, as the footage released is of a muffled lady of 40-50 years of age who was looking healthy and of good height. This CCTV footage does not match with the deceased Pooja, who was fairly slim and less than 5 feet in height. The deceased has been murdered and thrown on the railway track, giving an impression as if it was a case of suicide. She has further argued that despite there being allegations against the proposed accused, who had participated in the commission of offence leading to death of Pooja, the police did not submit final report against them for the reasons best known to them.

On the other hand, learned counsel for respondent no.3 has argued that after the registration of the FIR, the police has investigated the matter and found that false allegations have been levelled against the accused sought to be summoned. He has further argued that the name of respondent no.2-Jaswant Pal did not even find mention in the FIR. As per Ex.P-18, the deceased had telephonic conversation with her father i.e. that present complainant-petitioner Ramesh Chand prior to her death and no such complaint was ever made. Rather, she was happy at that time. The present application under Section 319 CrPC has been filed by the complainant with an improved version while appearing as PW-5. In order to summon an additional accused, there must be some material on file to

suggest that *prima facie* case is made out against the accused sought to be summoned.

I have heard learned counsel for the parties.

There is no dispute so far as the proposition of law under the provisions of Section 319 CrPC and its applicability is concerned. The Court is fully empowered to summon a person, if on the basis of evidence, it appears to the Court that the person sought to be summoned has committed an offence. The Court can summon a person who has not been named in the FIR or though named in the FIR but has not been charge-sheeted by the investigating agency, as an additional accused. Extraordinary power has been conferred upon the Court under Section 319 CrPC, but it should be used very sparingly, only if compelling reasons exist for taking cognizance against other persons against whom action has not been taken. At the same time, summoning is a serious issue and has serious ramifications.

As per the statement of the complainant Ex.P-18 recorded by the police, Pooja had a telephonic conversation with the complainant a day prior to her death and she was happy at that time. She informed the complainant that the doctor, who had examined her, has stated that the foetus in her womb was weak. Thus, she has not made any complaint against the accused sought to be summoned. A joint statement of inhabitants of the locality has also been recorded by the police during investigation on 14.03.2017, wherein no offence was attributed to the proposed accused persons. Statement of Sanjay Kalyan, the mediator of the marriage of deceased Pooja and Pintu, was also recorded by the police

under Section 161 CrPC on 12.03.2017 and as per his statement, the deceased had met him on 10.02.2017 and at that time, she was accompanied by her husband Pintu and no such complaint was ever made against the proposed accused by her. Thus, on the basis of statement of inhabitants as well as mediator Sanjay Kalyan, no such complaint was made against the proposed accused regarding her maltreatment on account of dowry demand.

Hon'ble Supreme Court in the case of **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.”

In the case of Hardeep Singh v. State of Punjab 2014(3)

SCC 92, the Apex Court has held as under:-

“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 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.

By virtue of order dated 20.07.2018, the present petition is required to be dealt with qua respondent no.3-Prem Chand, who is father-in-law of the deceased. The CCTV footage from the CCTV camera installed in the house of some neighbour of the proposed accused was also collected by the investigating agency and during investigation, none of the proposed accused was seen accompanying the deceased while leaving the house in wee hours on 12.02.2017. The statement of the complainant Ex.P-18, nowhere suggest any specific allegation of demand of luxury car

by the proposed accused person. Pintu (husband) and Manjit Kaur (mother-in-law) are already facing trial.

Therefore, having recourse to the order dated 20.07.2018 passed by this Court and judgments passed by the Apex Court, mentioned above, no interference is warranted into the impugned order dated 11.04.2018 passed by the court below.

Accordingly, the present revision petition is dismissed.

January 22, 2019
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No