

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

CRR No.3652 of 2016 (O&M)
Date of Decision: March 16, 2020

Harjap Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Sidakmeet Singh Sandhu, AAG Punjab.

Mr. Ankur Bansal, Advocate
for respondents No.2 to 6.

JAISHREE THAKUR, J. (Oral)

1. The instant criminal revision has been filed by the petitioner seeking to challenge the order dated 01.09.2016 passed by the Sessions Judge, Kapurthala whereby, the application filed by the prosecution under Section 319 Cr.P.C. for summoning of respondents No.2 to 6 as accused to face the trial has been dismissed.

2. In brief, the facts of the case as stated in the FIR are that a marriage was solemnized of the deceased daughter of the petitioner with Jaspal Singh, out of which wedlock one son namely Tejvir Singh was born. It was alleged that when Jaspal Singh was married to the deceased, he had not disclosed that he was already married to a girl at Philippines, which fact

came to their knowledge after the birth of the minor son. It has been mentioned that because of this reason fights had been taking place between both the deceased and Jaspal Singh and said Jaspal Singh started beating his daughter daily. On 25.09.2014, at around 8/9 p.m., deceased Rajwinder Kaur had called him that her husband is beating her and minor son, on which they reached the matrimonial home of his daughter on 26.09.2014 at around 4.30/5.00 p.m. On reaching there, he saw her dead body was lying upside down, with grievous injuries on her eyes, cheeks and all over the face. The minor son of the deceased was also dead. The matter was reported to the police and after completing the investigation, a challan was presented against accused Jaspal Singh, husband of the deceased and respondents No.2 to 6 were kept in column No.2. Thereafter, charges were framed and evidence of the prosecution started, in which petitioner-complainant Harjap Singh appeared as PW1 and his further examination-in-chief was deferred as the prosecution wanted to move an application under Section 319 Cr.P.C. for summoning of respondents No.2 to 6 herein as accused to face the trial. The application under Section 319 Cr.P.C. moved by the prosecution was dismissed by the trial court by an order dated 01.09.2016, which order has been assailed in this criminal revision.

3. Mr. P. S. Ahluwalia learned counsel for the petitioner herein would contend that respondents No.2 to 6, who are relatives of accused-Jaspal Singh, had played an active role in the killing of daughter of the petitioner-complainant along with her minor son. It is argued that the petitioner herein while appearing as PW1 had deposed before the trial court the mode and manner in which his daughter and the minor grandson were

killed. It is argued that this is a case of a double murder of a young woman and her minor child, with an eye on the property of the husband. In support of his arguments, learned counsel relied upon judgments rendered by the Apex Court in ***Hardeep Singh vs. State of Punjab and others, 2014(1) RCR (Criminal) 623*** and ***Sunil Kumar Gupta and others, Criminal Appeal No.395 of 2019(Arising out of SLP (Crl.) No.4626 of 2017, decided on 27.02.2019.***

4. Per contra, learned counsel appearing on behalf of respondents No.2 to 6 contends that false allegations have been leveled against respondents No.2 to 6, only on the basis that they are related to Jaspal Singh, husband of the deceased. It is argued that respondents No.2 to 6 are totally innocent and had not committed the alleged offence. It is submitted that a false story has been projected by the petitioner, just to rope in all the other family members of Jaspal Singh, who had no concern with the family affairs of Jaspal Singh. It is also contended that during the course of investigation, respondents No.2 to 6 were found to be false by the investigating agency. It is pointed out that Jaspal Singh used to reside separately along with his wife and son. It is also argued that no ground is made out to interfere with the impugned order, which has been passed taking into account the evidence and material available on record.

5. I have heard learned counsel for the parties and with their valuable assistance, have gone through the case file.

6. The law is now well settled as regards summoning of a person as an additional accused under Section 319 Cr.P.C. The power to summon a person as an additional accused is undisputed, but the same has to be

exercised sparingly, with caution, and to be exercised in order to ensure that the culprit does not get away. In ***Hardeep Singh v. State of Punjab, (2014)***

3 SCC 92 the Constitution bench of the Supreme Court held:

“105. Power under Section 319 CrPC 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 CrPC. In Section 319 CrPC 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 to form any opinion as to the guilt of the accused.”(emphasis supplied).*

7. The Supreme Court in **Brijendra Singh and others vs. State of Rajasthan (supra)** while summing up the ratio as laid down in **Hardeep Singh's case (supra)** held:

“Power under [Section 319 Cr.P.C.](#) can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some ‘evidence’ against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The ‘evidence’ herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilized for corroboration and to support the evidence recorded by the Court to invoke the power under [Section 319 Cr.P.C.](#) No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under [Section 319 Cr.P.C.](#) and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom chargesheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.”

8. It is settled proposition of law that 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 other words, a person should be summoned under Section 319 Cr.P.C. only when court finds that evidence on record is such which would reasonably lead to conviction of person sought to be summoned. Further, when the accused is found innocent by the Investigating Agency, simple statement of complainant vide which the complainant reiterates the allegations already made in the complaint, is not sufficient to summon the said accused under Section 319 Cr.P.C.

9. In the case in hand in the FIR, the petitioner-complainant had *inter alia* alleged that Jaspal Singh did not disclose about his first marriage at Philippines to them prior to the marriage of his deceased daughter with him, because of which reason rifts started taking place between both the husband and wife almost daily. It is also mentioned in the FIR that due to this reason, the petitioner-complainant had bought 07 marla land from a village resident only for his daughter and Jaspal Singh. The allegations levelled against respondents No.2 to 6, who are related to Jaspal Singh, are that they had been provoking Jaspal Singh and on which, Jaspal Singh used to beat his daughter daily. In the FIR, the petitioner-complainant has specifically stated that his daughter and grandson have been killed by his son-in-law Jaspal Singh on the provocation of respondents No.2 to 6. In the present case, after completing the investigation, the investigating agency

presented a challan only against Jaspal Singh and names of respondents No.2 to 6 were kept in column No.2 and subsequently, a cancellation report has been prepared against respondent No.2 to 6. The statement recorded of the complainant during trial does not introduce any new evidence for the court to summon respondents No.2 to 6 under Section 319 Cr.P.C. The statement of the petitioner-complainant in the FIR as well as while stepping into the witness box as PW1 is general in nature qua the respondents No.2 to 6 herein. *Prima facie* there is nothing available with the court to conclude that respondents No.2 to 6 were present on the spot.

10. Keeping in mind the aforesaid principles, this court is of the considered view that no ground is made out to interfere with the impugned order passed by the trial court, dismissing the application moved by the prosecution under Section 319 Cr.P.C., as no *prima facie* case is made out for summoning of respondents No.2 to 6 as accused to face the trial.

11. Consequently, in view of the foregoing discussion and ratio of law, the instant criminal revision is hereby dismissed, being devoid of any merits.

March 16, 2020

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No