

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

CRR-413-2021

Date of Decision: 05.04.2021

Naresh Kumar

Petitioner

Versus

State of Haryana and another

Respondents

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. H.S. Lalli, Advocate for the petitioner.

Ms. Dimple Jain, Assistant Advocate General, Haryana.

AVNEESH JHINGAN, J.

The matter is taken up for hearing through video conference due to COVID-19 situation.

This criminal revision petition is filed being aggrieved of order dated 2nd March, 2020 passed by the Additional Sessions Judge, Gurugram allowing application under Section 319 of Code of Criminal Procedure, 1973 [for short 'Cr. P.C']. Naresh Kumar (petitioner) is summoned for trial under Section 306/34 of the Indian Penal Code, 1860 [for short 'IPC'] alongwith accused Aruna and Lal Chand.

The facts in brief are that an FIR No. 146, dated 12th April, 2016, under Section 306/34 IPC was registered at Police Station Badshahpur, District Gurgaon, at the behest of Vimal Kumar. It was stated that his brother Prem Parkash [hereinafter referred to as 'deceased'] was running a jewellery shop. He lent money to Lokesh, Naresh and Aruna. When the money was asked for, the accused used to give beatings, being harassed, his brother committed suicide leaving the suicide note. In the suicide note, it was

mentioned that since lodging of the FIR against Lokesh, he was harassing the deceased, gave beatings and misbehaved with his wife. Further that petitioner (Naresh Kumar) was informer of the police, he was involved in cases and after managing his release, he was also harassing the deceased and gave beatings on 22nd February, 2016. On 2nd April, 2016, brother-in-law of the deceased (*saadu*) was given beatings. Deceased was being pressurized to enter into a compromise in a cheque bounce case against Aruna, on the terms not acceptable to him. It was further stated that the deceased was given beatings by the accused in the Police Station, in presence of S.H.O. Parveen Kumar. Thereafter, the deceased was sent back after being threatened. As per the note, on being harassed, the suicide was committed.

It would be pertinent to note here that FIR No. 401, dated 3rd September, 2015, under Sections 509, 323 and 506 of IPC was registered at Police Station Badshahpur, District Gurgaon against Lokesh at the instance of deceased. It was alleged that when deceased came outside the Police Station after making the statement with regard to his application Lokesh slapped and hit him with his helmet. His sister, who came there, was abused by Lokesh. In the fight, the deceased lost his gold chain weighing 5.5 *tolas*.

Mr. H.S. Lalli, learned counsel for the petitioner contends that the impugned order is erroneous, as the petitioner was declared innocent in enquiry made by the police. The *challan* was presented only against the co-accused and no protest petition was filed. The grievance is that petitioner is being summoned on the basis of statement made by the complainant (PW-2) without waiting for the cross-examination. The submission is that petitioner is not named in FIR, the summoning was on the basis of false allegations made by PW-2. Reliance is placed on the decision of the Supreme Court in ***Babubhai Bhimabhai Bokhiria and anothers Versus State of Gujarat and others, (2014) 5 SCC 568.***

Ms. Dimple Jain, Assistant Advocate General, Haryana

defending the impugned order, vehemently argues that petitioner is specifically named in the FIR, as also in the suicide note. The petitioner is being summoned in FIR No.146, dated 12th April, 2016 and not being named in FIR No. 401, dated 3rd September, 2015 is of no consequence.

Supreme Court in ***Hardeep Singh Versus State of Punjab and others, (2014) 3 SCC 92***, held that the efforts under Section 319 of Cr.P.C. is to ensure that real perpetrator does not get away unpunished, further that it is part of fair trial and in order to achieve this very end, this Section was incorporated. The Court has to proceed to find the truth so that innocent does not get punished but in the same time guilty is brought to the books under the law.

Petitioner being held innocent in the enquiry held by the Assistant Commissioner of Police is of not much help. There are unchallenged findings recorded in the impugned order to the effect that no independent investigation or verification of facts was made by police, the complainant party was not even made to join.

There is distinction between the person discharged and the person who was not charge-sheeted or investigated. The Court is empowered to summon the person not subjected to investigation or placed in Column No.2 of charge-sheet or against whom cognizance is not taken.

The Supreme Court in ***Hardeep Singh's case (supra)***, held as under:-

“104. However, there is a great difference with regard to a person who has been discharged. A person who has been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation; the court had come to the conclusion that there is not even a prima facie case to proceed against such person. Generally, the stage of evidence in trial is merely proving the material collected during investigation and therefore, there is

not much change as regards the material existing against the person so discharged. Therefore, there must exist compelling circumstances to exercise such power. The Court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398 Cr.P.C. without resorting to the provision of Section 319 Cr.P.C. directly.

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109. Thus, it is evident that power under Section 319 Cr.P.C. can be exercised against a person not subjected to investigation, or a person placed in the Column 2 of the Charge-Sheet and against whom cognizance had not been taken, or a person who has been discharged. However, concerning a person who has been discharged, no proceedings can be commenced against him directly under Section 319 Cr.P.C. without taking recourse to provisions of Section 300(5) read with Section 398 Cr.P.C.?”

The contention that on presentation of challan against the co-accused the Court applied its mind to non-filing of challan against the petitioner, is not well founded.

At the stage of filing the challan, it was stated that the petitioner and Lokesh were not arrested, after their arrest supplementary challan would be presented. On calling of status report, it surfaced that vide *zimni* orders dated 19th November, 2016 and 23rd January, 2017, the petitioner was declared innocent.

There was no application of mind by the Court with regard petitioner being declared innocent.

The non-filing of protest petition by the complainant

would not be fatal to the impugned order. The Court is empowered under Section 319 to summon the person even where the opportunity to file the protest petition is gone. The Supreme Court in ***Rajesh and others Versus State of Haryana, (2019) 6 SCC 368***, held as under:-

“7.8 Considering the law laid down by this Court in the case of Hardeep Singh (supra) and the observations and findings referred to and reproduced hereinabove, it emerges that (i) the Court can exercise the power under Section 319 of the CrPC even on the basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till the cross examination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 of the CrPC, provided from the evidence (may be on the basis of the evidence collected in the form of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial.

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7.10 Thus, even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial Court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of Section 319 of the CrPC and even those persons named in the FIR but not implicated in the charge-sheet can be summoned to face the trial provided during the trial some evidence surfaces against the proposed accused.”

The argument that impugned order was passed without waiting for cross-examination of PW-2 is no longer *res-integra*. The Supreme Court in ***Sartaj Singh Versus State of Haryana and another, (2021) 1 Crimes 487***, decided on 15th March, 2021,

considering decisions including in **Hardeep Singh's case (supra)** held:-

“6.2 Considering the law laid down by this Court in Hardeep Singh (supra) and the observations and findings referred to and reproduced hereinabove, it emerges that (i) the Court can exercise the power under Section 319 CrPC even on the basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till the cross-examination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross examination; and (ii) a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC, provided from the evidence (may be on the basis of the evidence collected in the form of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial.”

The argument of learned counsel for the petitioner that petitioner is not named in the FIR is factually wrong. The petitioner is specifically named in the FIR. There are allegations against him in the suicide note. The mere fact that petitioner is not named in FIR No. 401, dated 3rd September, 2015, lodged by the deceased will not enhance the case of the petitioner. The petitioner is being summoned in FIR No.146 registered for a separate incident.

Court after satisfying itself that from the statement made and the evidence led, *prima facie* case is made out against the petitioner, passed the impugned order. Apposite to mention that the petitioner was specifically named in the FIR. There are allegations in the suicide note.

The reliance on the decision in **Babubhai's case (supra)**, is of no help to the petitioner. In case before the Supreme Court, the summoning order was set aside as suicide note recovered was a year prior to death. The note never related to the cause of

death or circumstances which resulted in death. Note was found to be inadmissible evidence and not a dying declaration.

In the present case, in the FIR at the behest of the brother of the deceased and in suicide note recovered, there are specific allegations against petitioner. There is no issue at this stage with regard to admissibility of suicide note as evidence.

No case is made out for interference in the impugned order.

The petition is dismissed.

[AVNEESH JHINGAN]
JUDGE

5th April, 2021

pankaj baweja

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |