

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(201)

CRR No. 838 of 2019 (O&M)

Date of Decision : October 13th , 2021

Naresh Kumar @ Naresh Pehalwan

...Petitioner

Versus

State of Haryana

...Respondent

(through video conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sanjay Vashisth, Advocate for the petitioner.

Mr. Gaurav Bansal, Assistant Advocate General, Haryana.

Harsimran Singh Sethi J.

The present revision petition has been filed challenging the order dated 02.03.2019 passed by learned Sessions Judge, Jind, whereby, the petitioner has been summoned to face trial by allowing the application under Section 319 of the Criminal Procedure Code (hereinafter referred to as 'Cr.P.C.') filed by the prosecution in FIR No. 285 dated 07.08.2016, under Section 306 read with Section 34 IPC, registered at Police Station Sadar Jind, District Jind. Before advertng to the grounds of challenge, certain facts need to be enumerated here.

Complainant, Deepak son of Sita Ram made a complaint to the police, on the basis of which, FIR No. 285 dated 07.08.2016 was registered.

As per the allegations in the FIR, Sita Ram, father of complainant, committed suicide on 07.08.2016 and the reasons stated for the said act committed by the deceased was that one Rakesh, who is the son-in-law of the deceased, his elder brother Kawaljeet and the petitioner, Naresh Kumar @ Naresh Pehalwan were not returning the amount, which they took from the said Sita Ram citing financial difficulty having suffered losses in their business and made the deceased Sita Ram sell his land to arrange the amount so as to bail them out from the financial difficulty, despite the fact that the assurance was given by them to the deceased that the amount so given, will be returned along with interest. FIR records that a sum of Rs. 44 lacs was handed over by the deceased to Rakesh in the presence of the petitioner and Kawaljeet but thereafter, the said persons did not return the amount taken from deceased Sita Ram on one pretext or the other. Further allegation in the FIR is that even a Panchayat meeting was called on the asking of the deceased Sita Ram to solve the said issue but Rakesh, Kawaljeet and the petitioner, Naresh Kumar @ Naresh Pehalwan not only refused to attend the said meeting but also threatened the deceased Sita Ram by declaring that they are not going to return the amount whatever may come.

As per the FIR, Sita Ram committed suicide being perturbed due to non-return of the amount by the above said persons on 07.08.2016 and a suicide note was also recovered, wherein, all three persons i.e. Rakesh, Kawaljeet as well as petitioner, Naresh Kumar @ Naresh Kumar @ Naresh Pehalwan were named as the cause, which led Sita Ram to take his life. During the investigation, the suicide note recovered was got

forensically examined, wherein, the signatures of the deceased matched with that on the suicide note. As per the FSL report, common poison was not detected as the cause of death.

After the investigation, Rakesh as well as Kawaljeet i.e. both the brothers were found prima-facie guilty of the offence in the challan submitted by investigating agency and the petitioner, Naresh Kumar @ Naresh Pehalwan was found innocent. It may be noticed here that a factual aspect has already come on record that petitioner, Naresh Kumar @ Naresh Pehalwan, who is a police official, was sought to be proceeded against when investigation of the FIR was with the Crime Branch but after the said investigation was transferred back to the District Police, no challan was submitted against him holding him to be innocent.

During the trial, the prosecution examined complainant, Deepak, who reiterated the allegations against accused Rakesh and Kawaljeet as well as against the petitioner to the effect that they abetted the suicide committed by his father, Sita Ram as well as the allegation that petitioner along with other two accused had taken Rs. 44 lakhs from the deceased, which was not being returned by them, which fact led the deceased to take his own life. Thereafter, prosecution moved an application under Section 319 Cr.P.C. for summoning the petitioner as an additional accused to face trial along with Rakesh and Kawaljeet.

As per the prosecution, there was enough evidence against the petitioner so as to summon him to be tried for the offence along with other accused. The said application was contested. Vide order dated 02.03.2019, learned Sessions Judge, Jind allowed the said application filed by the

prosecution under Section 319 Cr.P.C. by holding that there is enough evidence on record to try the petitioner along with the other co-accused for the offence alleged in the FIR. The said order dated 02.03.2019 is under challenge in the present revision petition.

Learned counsel for the petitioner has argued that in the present case, the investigating agency conducted due investigation into the allegations and found the petitioner innocent and a similar statement of the complainant, as recorded while testifying before the trial Court, which allegations were also part of the FIR, was taken into consideration by the investigating agency and thereafter, the investigating agency came to a conclusion that petitioner is innocent of the allegations being alleged hence, mere statement of the complainant, which reiterated the same allegations in the FIR, cannot be made basis for summoning the petitioner to be tried as an accused by allowing the application filed by the prosecution under Section 319 Cr.P.C. Learned counsel for the petitioner further argued that the only other fact, which weighed with the trial Court for allowing the application under Section 319 Cr.P.C. filed by the prosecution to summon the petitioner as an additional accused to be tried for the offence, is that when the investigation was with the Crime Branch, the petitioner was sought to be proceeded against for the commission of the crime, though later on, when the investigation was transferred to the District Police, petitioner was found innocent, which fact cannot be a valid ground for the trial Court to come to the conclusion that there is, prima-facie, evidence against the petitioner so as to face the trial.

Learned counsel further argued that the parameters laid down

by the Hon'ble Supreme Court in *Hardeep Singh Vs. State of Punjab and others*, 2014 (3) SCC 92 as well as in Civil Appeal No. 763 of 2017 titled as *Brijendra Singh and others Vs. State of Rajasthan*, decided on 27.04.2017, are not met in the present case so as to allow the application filed by the prosecution under Section 319 Cr.P.C. to summon the petitioner as an additional accused to face the trial and, therefore, the impugned order dated 02.03.2019 passed by learned Sessions Judge, Jind is erroneous not only on the factual aspect but on law as well.

While opposing the prayer of the petitioner, learned State counsel argued that the trial Court has considered all the aspects including the report submitted by the Police under Section 173 Cr.P.C., the allegations alleged in the FIR as well as the evidence, which has already come on record during the investigation as well as trial to form an opinion that there is a prima-facie evidence, which is enough to summon the petitioner to face trial. Learned State counsel submitted that by allowing the application under Section 319 Cr.P.C. filed by the prosecution, the Court is not pronouncing the petitioner guilty or innocent but petitioner has only been directed to be added as an additional accused to face trial, after being satisfied that there was a prima-facie evidence on record for summoning the petitioner to be tried as an additional accused in the present FIR, hence, the order impugned in the present revision petition dated 02.03.2019 is perfectly valid on facts as well as on law and is liable to be sustained. Learned counsel for the respondent-State further submitted that nothing has been pointed out that as to why the complainant will involve his own brother-in-law i.e. husband of his real sister or his elder brother and the

petitioner in a false case or why, the deceased will name these three persons to be responsible for his death in his suicide note.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Certain aspects which needs to be noticed herein are that the complainant is the real brother-in-law of accused Rakesh, who is the husband of his elder sister and Kawaljeet is the elder brother of accused Rakesh and the petitioner is a friend of the above said accused and is employed with the Haryana Police. The factum that the money was paid by deceased Sita Ram to three accused has come on record more than once. The said aspect is duly mentioned in the FIR. In the FIR, it has been mentioned that the petitioner was accompanying the other accused Rakesh and Kawaljeet when they asked for money from deceased Sita Ram and it has also come on record that petitioner was present when the said money was handed over to the accused persons. Payment of money by the deceased to the accused has also come on record during the investigation as well as in the challan submitted by the police under Section 173 Cr.P.C. Even during the testimony being recorded in the trial, the said fact has come in the testimony of the complainant.

Not only this, another factor, which is very important to highlight is that the petitioner has been duly named by the deceased himself in the suicide note as being a cause, which led the deceased to take his own life. The signatures on the suicide note are admittedly of deceased Sita Ram. That being so, the factual aspect is that there was some money dispute between deceased Sita Ram and the accused persons including petitioner,

which according to suicide note, led the deceased to take his own life.

The argument of learned counsel for the petitioner that once the petitioner was found innocent in the investigation, after considering the complaint filed by the complainant, which is on the same lines as the testimony of the said complainant before the trial Court, the report of the investigating agency should not be overruled, cannot be accepted for the reason that it would imply that wherever the investigating agency has exonerated the person during investigation and the challan has not been presented against the said accused, he/she cannot be summoned under Section 319 Cr.P.C. under any circumstances. This is not envisaged by the provisions of Section 319 Cr.P.C. According to Section 319 Cr.P.C., after appreciating the factual aspect as well as the evidence, which had come on record during investigation as well as trial, Court has to conclude that there is enough material on record, which prima-facie makes out a case against a person to be summoned as an additional accused to face the trial. Therefore, the importance being given to the report submitted by the investigating agency under Section 173 Cr.P.C. by the learned counsel for the petitioner and that too by ignoring other relevant facts, cannot come to the rescue of the petitioner so as to challenge the present order.

Learned counsel for the petitioner was requested to point out from the report submitted by the investigating agency in the present case wherein the petitioner has been declared innocent, as to how the suicide note has been dealt with therein, especially, when the signatures of the deceased on the said suicide note have been proved by the FSL report and the said suicide note duly named the petitioner as one of the person due to

whom the deceased took his own life but nothing could be pointed out by the learned counsel for the petitioner except that as per challan no money was transferred to any of the accounts of the petitioner. Mere non-deposit of the money taken from the deceased Sita Ram in the account of the petitioner, cannot be taken as an important factor to declare the petitioner innocent by ignoring the other relevant factors such as suicide note which specifically named the petitioner. Finding given by the investigating agency in the challan submitted is to be seen in the light of the fact that petitioner is a police official and also that Crime Branch of the Haryana Police sought permission to prosecute the petitioner at one given point of time though, later on the investigation was transferred to the District Police, which agency exonerated the petitioner. Under these circumstances, the report given by the investigating agency under Section 173 Cr.P.C., cannot be taken as gospel truth to accept the plea of the petitioner that he is to be treated as innocent by ignoring the other factual aspects including the suicide note and other evidence, which has come on record.

Learned counsel for the petitioner places reliance upon the following judgments so as to contend that the challan submitted by the police carries a significance and also the fact that the statement given by the complainant reiterating the allegations, which were part of the FIR, cannot made a ground to summon an accused to face trial while allowing the application of the prosecution under Section 319 Cr.P.C. :-

Labhuji Amratji Thakor and others Vs. State of Gujarat and another, 2019(1) RCR (Criminal) 1, Sunil Kumar Gupta and others Vs. State of Uttar Pradesh and another, Criminal Appeal No. 395 of 2019,

decided on 27.02.2019 and Periyasami and others Vs. S. Nallasamy, Criminal Appeal No. 456 of 2019, decided on 14.03.2019.

The point of law enumerated by the Hon'ble Supreme Court of India in the judgments, which have been cited by the learned counsel for the petitioner, is that though the Court has power to summon a person as an additional accused to face trial but the same should be done with judicious mind after analyzing all the factors to form an opinion that there exists *prima-facie* evidence to summon the said person. The guidelines, which have been given by the Hon'ble Supreme Court is that unless and until the allegations alleged against a person are corroborated by evidence on record to convince the Court that there exists a *prima-facie* case against the person so as to face the trial, the application filed by the prosecution should not be allowed. Further the Hon'ble Supreme Court of India has held that if material/enough evidence has come on record to cause a *prima-facie* doubt on the challan, then the findings by the investigating agency, can be overruled so as to summon an accused to face the trial.

There is no straight jacket formula presented either to accept the challan in toto or to ignore it. Every case has to be dealt on its own merit keeping in view the facts and evidence on record before the trial Court. In the present case, the trial Court has *prima-facie* found that the evidence exists against the petitioner to summon him to face the trial as an additional accused and the reasons have also been given though, the same might not be in detail. The facts, which have been detailed hereinbefore, go to show that there is enough evidence on record to form an opinion that there exists a *prima-facie* case to summon the petitioner to face the trial.

The judgments, which have been cited by learned counsel for the petitioner, were taken into consideration by the Hon'ble Supreme Court of India in Criminal Appeal No. 368 of 2018 titled as ***Virendra Singh Vs. The State of Madhya Pradesh and another***, decided on 04.02.2019, wherein it is held that where the statements of the prosecution witnesses implicate an accused so as to shake the *alibi*, the same is to be treated as a *prima-facie* evidence on record to form an opinion to summon an accused to face the trial under Section 319 Cr.P.C. The relevant portion of the said judgment is as under :-

“4. We have perused the statements of P.W. Nos. 3, 4 & 5. Each one of these witnesses has specifically implicated Manoj Singh stating that he fired shots at the deceased. In addition, PW-4 has specifically stated that one could reach Gwalior if one passed from Dong within a period of 10-15 minutes. The same thing is stated by PW-5-Dilip Singh. This would shake Manoj's alibi that he was not at the place where the incident took place because it is clear that he was at the other place half an hour before the said incident.

5. We have also perused the judgment of this Court in Brijendra Singh and Others v. State of Rajasthan, (2017) 7 SCC 706 (para 13) and the Constitution Bench judgment of this Court in Hardeep Singh v. State of Punjab & Others, (2014) 3 SCC 92 (para 106) and are satisfied that this is a case which falls clearly within the parameters laid down in the said judgments.”

In the present case, even learned counsel for the petitioner could not point out as to how the investigating agency has dealt with the suicide note which clearly names the petitioner as an abettor and in the FSL report the said suicide note has been found to be signed by the deceased, so

as to declare the petitioner innocent. Further more, the factum that the petitioner is a police official, is also a significant factor to be noticed while placing reliance upon the report submitted by the investigating agency under Section 173 Cr.P.C., especially, when the Crime Branch of the Haryana Police sought sanction to prosecute the petitioner for the allegations alleged in this FIR. Parameters laid down in ***Hardeep Singh's case (supra)***, ***Brijendra Singh and others' case (supra)*** by the Hon'ble Supreme Court of India, in the opinion of this Court, are fulfilled so as to summon the petitioner as an additional accused to face trial.

Keeping in view the above, as there is more than prima-facie evidence already on record to form an opinion that the petitioner needs to be summoned as an additional accused to face trial, therefore, no interference is called for in the impugned order dated 02.03.2019 by this Court.

Dismissed.

October 13th, 2021
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No