

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(through video conferencing)**

CRR-735-2021
Decided on : 23.07.2021

Radhey Shyam

..... Petitioner

Versus

State of Haryana & anr.

..... Respondents

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Raman Chawla, Advocate
for the petitioner.

Manjari Nehru Kaul, J.(Oral)

Challenge in the instant petition is to the order dated 09.07.2021 passed by Addl. Sessions Judge, Hisar vide which the petitioner has been summoned as an additional accused on an application moved under Section 319 Cr.PC by the public prosecutor through complainant.

Brief facts of the prosecution case may be summed up as under:

The FIR in question was registered at the instance of Bimlesh, cousin of deceased Neetu, wherein he alleged that his cousin Neetu (since deceased) was being subjected to continuous physical and mental harassment by her husband, her parents-in-law and sister-in-law. It was also alleged that a day prior to the occurrence in question the deceased had phoned up Vipin @ Rahul wherein she had asked them to take her away else she would be killed. On the following day, the husband of the deceased i.e. Kuldeep Singh informed the complainant that Neetu had been hospitalised. As soon as the said information

was received, the complainant along with three others including Vipin @ Rahul reached Hisar and learnt that the body of the deceased Neetu had been taken to the cremation ground and preparation was underway for her cremation. No sooner did the accused including the petitioner, saw the complainant and others, they fled away from the spot. On close scrutiny of the dead body, the complainant party noticed injury marks on the neck of the deceased as a result of which the complainant immediately got his statement recorded before the police leading to the registration of the FIR in question.

Learned counsel for the petitioner vehemently argued that a thorough investigation was carried out by the police on receipt of the complaint and registration of the FIR in question, however, the petitioner, who is father-in-law of the deceased, was found innocent during investigation and placed in column No.2. He further submits that it stood proved from the material collected by the investigating officer during investigation that the petitioner was not present at his house when the deceased Neetu hanged herself to death. It has also been submitted that in the facts and circumstances of the case, the Court below gravely erred in allowing the application under Section 319 Cr.PC even though no fresh evidence had come on record before the trial Court warranting the summoning of the petitioner to face the trial.

Heard and perused the material available on record as well as the deposition of the complainant (Annexure P-4), who stepped into the witness box as PW-5.

The contention of learned counsel for the petitioner that once

the investigating agency had found the petitioner innocent and placed him under Column No.2, the Court below could not have summoned him on an application moved under Section 319 Cr.PC, deserves to be discarded.

Merely because the investigating agency had found the petitioner innocent during investigation would not be a ground for not summoning him while considering an application under Section 319 Cr.PC. The Court has to just prima facie satisfy itself from the material on record as well as the evidence led during the trial whether there is merit in the application filed under Section 319 Cr.PC, else the very purpose and object of Section 319 Cr.PC would stand defeated.

Adverting to the case in hand, perusal of the allegations levelled in the FIR in question against the accused including the petitioner reveal that not only was he specifically named and assigned a role in the crime in question but when the complainant stepped into the witness box as PW-5 he reiterated the allegations levelled in the FIR in unambiguous terms qua the role played by all the accused including the petitioner in the crime in question. As such, it cannot be said to be an after thought on the part of the complainant. Still further, the factum of alibi as pleaded by the petitioner would not come to his aid at this stage and would only be tested by the trial Court during the trial.

Accordingly, the present petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

23.07.2021
sonia

Whether speaking/reasoned:
Whether reportable :

Yes/No
Yes/No