

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRR-226-2022 (O&M)
Date of Decision:- 4.2.2022

Amit Chauhan

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. R.S.Rai, Senior Advocate with
Mr. Manish Soni, Advocate for the petitioner.

(proceedings conducted through video conferencing)

GURVINDER SINGH GILL, J.

1. The petitioner assails order dated 25.1.2022 passed by learned Additional Sessions Judge in exercise of powers under Section 319 Cr.P.C. vide which the petitioner Amit Chauhan has been ordered to be summoned so as to face trial alongwith remaining accused in a case arising out of FIR No. 461, dated 28.10.2018 under Sections 120-B, 302/34 IPC at Police Station DLF, Phase-I, Gurugram, District Gurugram.
2. Notice of motion.
3. At this stage, Mr. Rahul Mohan, DAG, Haryana representing respondent - State of Haryana, upon whom an advance copy of the petition has already been served has put in appearance.

4. I have heard the learned counsel for the petitioner and also the learned State counsel.
5. The FIR in question was lodged at the instance of Hari Krishan, father of the deceased Deepika (daughter of complainant). The complainant alleged that his daughter Deepika was married to Vikram Chauhan in February, 2012 and had been blessed with two children. She was residing with her husband in Flat No.804, 8th floor, Tower 3 Valley View Estate, Gurugram. The complainant's son Himanshu Ahuja is also residing in the same 'Society'. On 27. 10.2018, he received a telephonic call from his son asking him to reach their 'Society' as Deepika had fallen from 8th floor and had been taken to hospital by some other members of the 'Society'. The complainant reached hospital at about 3:30 A.M. on 28.10.2018 where he was informed by his son that complainant's daughter Deepika had expired. Upon enquiry, the complainant came to know that there had been a dispute between Deepika and her husband Vikram since the last about 6 months on account of an illicit relationship of Vikram with a lady named Shefali Tiwari, who was also resident of the same 'Society'. It is alleged that the said Shefali who was married was residing with her mother and her relationship with Vikram was also known to other members of the 'Society'. The complainant has further alleged therein that he had come to know that at the time of occurrence, Vikram and his elder brother Amit were present at the scene of crime and had been seen by another resident of the 'Society' namely Ms. Leena. It is, thus, alleged that Vikram and Shefali had conspired together to eliminate complainant's daughter Deepika.

6. The matter was investigated by the police and upon conclusion of investigation, a challan was presented against Vikram Chauhan and Ms. Shefali Bhasin for offences under Sections 120-B, 302, 201 IPC. Pursuant to framing of charges, the prosecution examined the complainant i.e. PW-1 Hari Krishan on 28.9.2021. On the same day itself, an application was moved under Section 319 Cr.P.C. by the prosecution seeking summoning of Amit Chauhan (brother of accused Vikram Chauhan) *inter alia* on the ground that the petitioner was also present at the place of occurrence and that a neighbour namely Ms. Leena had seen him. Para 9 of the said application reads as follows :-

“That it is important to mention here that it has also come in the statement u/s 161 CrPC of Leena & Surender, that on hearing the noise of Vikram and his wife, he alongwith his wife came out of his flat and saw that Vikram and Amit were present in the balcony of the flat and that Vikram has thrown her wife from the balcony with the help of his brother Amit Chauhan.”

7. The learned trial Court, upon considering the aforesaid application passed the impugned order dated 25.1.2022 vide which the petitioner has been ordered to be summoned in terms of Section 319 Cr.P.C.
8. The learned counsel for the petitioner has confined his submissions to the effect that the complainant admittedly was never present at the spot and was residing in a different city and had reached Gurugram when the occurrence had taken place after he had been informed telephonically about the incident by his son. The learned counsel has submitted that infact even if the contents of FIR are taken to be correct, it merely states that the complainant

i.e. PW-1 Hari Krishan, after reaching the place of occurrence had come to know that the petitioner was also present at the scene of crime and had been seen by another resident of the society. It has nowhere specifically been mentioned that the petitioner along with his brother Vikram Chauhan had thrown the complainant's daughter from the 8th floor of the building.

9. The learned counsel has submitted that the petitioner is sought to be nominated as an accused on the basis of statements of the neighbours i.e. Ms. Leena and her husband Surender recorded under Section 161 Cr.P.C. where they claimed to have witnessed the occurrence when the petitioner and his brother Vikram Chauhan were allegedly throwing the deceased from the balcony. The learned counsel has submitted that in these circumstances, it is the statements of the alleged eye-witnesses Ms. Leena and Surender, which would be material for ascertaining the involvement and participation of the petitioner and that the statement of PW-1 complainant Hari Krishan which admittedly based on hearsay evidence would not carry any value.
10. On the other hand, the learned State counsel while opposing the petition has submitted that since the name of the petitioner figures in the FIR and the complainant has also specifically levelled allegations against him in his statement recorded in Court, his complicity is clearly evident and that he is required to be tried as a co-accused. The learned State counsel has, however, could not deny the fact that the statement of complainant PW-1 Hari Krishan is based on hearsay evidence and that he himself is not a witness to the occurrence.
11. I have considered rival submissions addressed before this Court.

12. A perusal of the FIR clearly indicates that the complainant PW-1 Hari Krishan, who is a resident of Chandigarh was not present at the place of occurrence, which had taken place in Gurugram on 27.10.2018. Admittedly, complainant PW-1 Hari Krishan, upon receiving telephonic information from his son reached hospital at 3:30 a.m. on the next day i.e. on 28.10.2018. As per the FIR, it is upon the inquiries made by the complainant that he came to know that Amit Chauhan was also present at the scene of crime and that he had been seen by another resident of the society namely Ms. Leena. However, the said Ms. Leena or her husband Surender who are stated to be neighbours of the deceased have not been examined by the trial Court, though they were present in the Court on 28.9.2021 when the statement of complainant PW-1 Hari Krishan was recorded. The zimini order recorded by the trial Court on 28.9.2021 reads as follows :-

“Five PWs namely Hari Krishan, Ms. Leena, Surender, Parmod and Rakesh are present out of whom PW namely Hari Krishan is only examined. An application under Section 319 Cr.P.C. filed on behalf of complainant. Ld. PP for the State has today got recorded statement that he does not want to examine PWs namely Ms. Leena, Surender, Parmod and Rakesh today present in the Court as an application under Section 319 Cr.PC has been moved on behalf of the complainant. All the above named witnesses may kindly be discharged unexamined for today. Now the case stands adjourned to 12.10.2021 for consideration on the above said application. “

13. Though, the trial Court does have power to summon an additional accused in case it is satisfied that some evidence has been brought before the trial Court

indicating the involvement of such additional accused but it is well settled that such powers are not to be exercised in a cavalier manner. In the present case, the petitioner has been summoned merely on the basis of statement of the complainant who himself had never witnessed the occurrence and his information is based on hearsay evidence i.e. the information he himself received from Ms. Leena and Surender. The said witnesses, though cited as PWs are yet to be examined. A Constitution Bench of Hon'ble Supreme Court in Hardeep Singh v. State of Punjab and Others (2014) 3 SCC 92, while discussing the scope of Section 319 Cr.P.C. held as follows:

105. Power under Section 319 Cr.P.C. 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 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.”

14. Hon'ble Supreme Court in a recent judgement, delivered on 17.09.2021 in Ramesh Chandra Srivastava vs. State of U.P., (Criminal Appeal No. 990 of 2021), while relying upon Hardeep Singh's case (supra), reiterated the legal position as regards summoning under section 319 Cr.P.C. in the following words:

“The test as laid down by the Constitution Bench of this Court for invoking power under Section 319 Cr.P.C. *inter-alia* includes the principle that only when strong and cogent evidence occurs against a person from the evidence the power under Section 319 Cr.P.C. should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by this Court, is one which is more than *prima facie* case which is applied at the time of framing of charges.”

15. In these circumstances, summoning the petitioner merely on the basis of some evidence, which is in the nature of hearsay evidence would not be justified or appropriate.
16. The petition, as such merits acceptance and is hereby accepted. The impugned order dated 25.1.2022 is hereby set aside. It is, however, clarified that the prosecution would be at liberty to move an application under Section 319 Cr.P.C. afresh after some more evidence is recorded by the trial Court indicating involvement of the petitioner. In case, any such application is

filed afresh before the trial Court, the same shall be decided without taking into account the setting aside of the impugned order. In other words, the trial Court shall not be prejudiced in any manner by acceptance of this petition and shall proceed to decide the fresh application independently while appraising all such evidence that may be brought on record before the trial Court.

17. The petition stands disposed off accordingly.

4.2.2022

kamal

(GURVINDER SINGH GILL)
JUDGE

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No