

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-576-2020

Date of Decision: 28.04.2022

Devinder Kaur

....Petitioner(s)

Versus

State of Punjab and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Vishal Munjal, Advocate, for the petitioner.

JASGURPREET SINGH PURI, J.(Oral)

The present revision petition has been filed assailing the order dated 08.11.2019 passed by the learned Additional Sessions Judge, Gurdaspur, whereby the application filed by the complainant/petitioner under Section 319 of the Code of Criminal Procedure for summoning two persons namely, Kulwinder Singh and Joginder Singh as additional accused has been dismissed in illegal and erroneous manner.

Brief factual matrix in the present case is that an FIR was lodged under Sections 306, 420, 506 and 34 IPC on the statement made by one Davinder Kaur in which it has stated that Baljinder Singh is her husband and Gurbinder Singh and Harpinder Kaur are her son and daughter and her son is working in police and the daughter has studied upto 12th class and now is doing household work. In March, 2017, one Johnson Masih @ Rahul and his wife Anju @ Mona came to their house and said that they are running a business in Canada and they both are working as agents and they take an

amount of Rs. 14,50,000/- for sending people to Canada. The complainant and her husband then arranged the money for sending their son Gurbinder Singh to Canada. In the month of April, they gave Rs. 14,50,000/- and passport of their son to them but subsequently, their son got selected in police. The aforesaid two accused person gave them a cheque of Rs. 7 lakhs. The husband of the complainant was illiterate and he had acquaintance with Kulwinder Singh and Joginder Singh. These two persons namely, Kulwinder Singh and Joginder Singh also gave Rs. 14,50,000/- to the aforesaid accused Johnson Masih @ Rahul and his wife for sending their son Jobanpreet Singh abroad. The cheque given by the accused namely, Johnson Masih @ Rahul and his wife was dishonoured by the bank because there was no money in the account and thereafter they stopped picking up the phone. In the same manner two persons namely, Kulwinder Singh and Joginder Singh also went to the accused persons namely, Johnson Masih @ Rahul and his wife for getting their money back but they did not return the money and thereafter these two persons namely, Kulwinder Singh and Joginder Singh got agitated and threatened the husband of the complainant that he should get their money back from the aforesaid accused. Thereafter, being fed up, the husband of the complainant consumed poison and unfortunately died.

During the course of investigation two persons namely, Kulwinder Singh and Joginder Singh were exonerated by the police because nothing was found against them as they were themselves victim of the main accused namely, Johnson Masih @ Rahul and his wife Anju and they were kept in column No.2 and therefore, no challan was presented against them.

Thereafter vide Annexure P-3 the complainant Davinder kaur stepped into

witness box as PW1 and reiterated the allegations which she had made to the police while lodging of the FIR and thereafter, an application was filed by the complainant under Section 319 of the Code of Criminal Procedure seeking to summon the aforesaid Kulwinder Singh and Joginder Singh as the additional accused. However, the said application was dismissed by the learned Additional Sessions Judge, Gurdaspur on 08.11.2019 and this order has been assailed by way of present revision petition.

It has been submitted by the learned counsel for the petitioner that so far as the factual position pertaining to Kulwinder Singh and Joginder Singh regarding whom the application under Section 319 of the Code of Criminal Procedure was moved is concerned, they had also given an amount of Rs. 14,50,000/- to the main accused namely, Johnson Masih @ Rahul and his wife Anju but since the complainant and her husband were asking the two aforesaid persons to get back the money from the main accused and when they failed to do so, then a fight took place among themselves. He further submitted that in this way offence under Section 306 IPC was also attributable to the aforesaid two persons namely, Kulwinder Singh and Joginder Singh and they are liable to be summoned as the additional accused.

I have heard the learned counsel for the petitioner.

The application under Section 319 Cr.P.C moved by the complainant was dismissed vide impugned order dated 08.11.2019 by the learned Additional Sessions Judge, Gurdaspur on the ground that there is nothing to show any prima facie case for summoning of the additional accused. It has been further observed in the impugned order that the allegations which are contained in the statement of PW-1 complainant

Davinder Kaur have already been considered by the Investigating Agency and the same were found to be not proved and the prosecution has not been able to point out any material which was not considered by the Investigating Agency at the time of declaring abovesaid Joginder and Kulwinder Singh innocent in the present FIR. The learned Sessions Judge came to the conclusion that there is no ground available with the complainant for summoning the aforesaid Kulwinder Singh and Joginder Singh as the additional accused.

The law with regard to summoning of an additional accused under Section 319 of the Code of Criminal Procedure is now well settled. A Constitution Bench of the Hon'ble Supreme Court in ***Hardeep Singh Versus State of Punjab and others [2014(3) Supreme Court Cases 92]*** held that it has to be shown that there is a more than prima facie case for the purpose of summoning of an additional accused and unless the Court is satisfied that a strong and cogent evidence is available and summoning should not be allowed while exercising power under Section 319 Cr.P.C. The relevant portion of the aforesaid judgment is reproduced as under:-

“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 unrebutted 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 of “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”.

In the present case a perusal of the FIR would show that the persons namely, Kulwinder Singh and Joginder Singh who are sought to be summoned appear to be victims themselves of the main accused namely, Johnson Masih @ Rahul and his wife Anju and the same is reflected in the FIR itself. The allegations in the FIR are only reiterated in the statement made while deposing by the complainant. There is no other evidence available on the paper-book or in the arguments raised by the learned counsel for the petitioner to connect these two persons namely, Kulwinder Singh and Joginder Singh with the offence of suicide when they themselves were the victims. On the face of it there is no cogent or strong evidence available for the purpose of summoning of the aforesaid two persons namely, Kulwinder Singh and Joginder Singh as the additional accused.

Therefore, this Court is of the considered opinion that the present criminal revision petition is liable to be dismissed since there is no infirmity or perversity in the orders passed by the learned Additional Sessions Judge, Gurdaspur while dismissing the application under Section

319 of the Code of Criminal Procedure.

Therefore, finding no merit in the present petition, the same is hereby dismissed.

28.04.2022

rakesh

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking	:	Yes/No
Whether reportable	:	Yes/No