

CRR-1820-2016(O&M)

**(106) IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRR-1820-2016(O&M)
Date of decision : 15.03.2022

Vikas

... Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr.Deepender Singh, Advocate for the petitioner.

Mr. Vikrant Pamboo, DAG, Haryana.

Mr. Sanjay Vashishth, Advocate with
Mr. Akash Vashishth, Advocate for the complainant.

JASJIT SINGH BEDI, J. (ORAL)

The instant revision petition is directed against the order dated 12.02.2016 passed by the learned Additional Sessions Judge, Palwal whereby an application moved by the prosecution under Section 319 Cr.P.C. has been allowed and the present petitioner has been directed to face trial as an additional accused in case FIR No.87 dated 17.03.2015, under Sections 302/120-B IPC, registered at Police Station Hathin, District Palwal.

2. The brief facts of the case are that FIR was registered at the instance of the complainant-Jagdish. Deceased is Hemraj i.e. son of the complainant. Hemraj was stated to be working as Clerk with Mr. Vijender Gautam, Advocate. The complainant's version is that on 16.03.2015, his son as usual had gone to the Court at Hathin for work

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and had not returned home. Upon a telephonic call having been made by complainant to Hemraj, it was alleged that Hemraj informed his father that he was at the house of Sunil along with some other boys, including the present petitioner. Thereafter, even the brother of the deceased, namely, Mahender is stated to have given a telephonic call to Hemraj and was informed that he would be returning home within 10 minutes. Hemraj, however, did not return home and on the following date i.e. on 17.03.2015 his body was discovered and found hanging in a cottage. In a nutshell, the allegations raised by the complainant were that his son had been killed under a conspiracy hatched by Sunil as also other persons, including the present petitioner.

3. During the course of investigation, the challan was submitted against Sunil and Jugan. The petitioner was found innocent as per Zimni order dated 21.10.2015 and as such, his name was kept in column 2 of the final challan document. An application under Section 319 Cr.P.C. having been moved, the same was allowed leading to the passing of the impugned order.

4. The learned counsel for the petitioner while assailing the order dated 12.02.2016 contended that the same has been passed in a routine and mechanical fashion. The only reasoning furnished by the Court while allowing the application under Section 319 Cr.P.C. is that the Investigating Agency had not made any effort to arrest Vikas and that the trial would proceed against the other accused and if the petitioner was arrested later, then the trial would get delayed. He, thus contended

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that there was no discussion as to what evidence had come on record to summon the accused.

5. The learned counsel placed reliance upon the judgments of the Hon'ble Supreme Court in '**Hardeep Singh Vs. State of Punjab and others 2014(1) Recent Apex Judgment 384**', and '**Sagar Vs. State of U.P., Criminal Appeal No.397 of 2022 (Arising out of SLP(Crl) Nos.7373 of 2021) dated 10.03.2022**', wherein the scope and power to be exercised under Section 319 Cr.P.C. had been examined and it was settled that for summoning a person as additional accused, it would require much stronger and cogent evidence than mere probability of complicity of such person in the offence and the test that has to be applied is one which is more than *prima facie* case as exercised at the time of framing of the charge.

6. It was argued by the counsel that the entire prosecution version hinges on the alleged telephonic conversation that took place between the deceased, Hemraj and his father i.e. complainant, Jagdish and in the entire challan document, no evidence has been collected with regard to any call record details between the complainant and the deceased of the concerned day i.e. of 16.03.2015. It was submitted that this aspect had been completely overlooked by the Court while passing the order.

7. The learned counsel for the complainant on the other hand contends that the allegations against the accused facing trial and the present petitioner are identical in the FIR as also in the deposition of witnesses. He contends that no reasoning has been adopted to keep the

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petitioner in Column No.2 and once the petitioner had been duly named in the FIR as also in the deposition of witnesses, it cannot be said that the summoning order dated 12.02.2016 was incorrectly passed.

8. I have heard the learned counsel for the parties at length.

9. The law as laid down in the case of '**Hardeep Singh** and **Sagar's** case (supra) clearly lays down the scope and power to be exercised under Section 319 Cr.P.C. and it is settled that for summoning a person as an additional accused, it would require much stronger and cogent evidence than mere probability of complicity. If this test is applied in the present case, it is apparent that there is absolutely no evidence against the petitioner so as to summon him to face trial as an additional accused, along with two accused already facing trial.

10. It may be relevant to mention here that undoubtedly, the petitioner is named in the FIR as also in the deposition but beyond that there is no evidence against him.

11. The prosecution case hinges on an alleged telephonic conversation between the deceased and the complainant-Jagdish. There is nothing in the report under Section 173 Cr.P.C. with regard to any call details between the complainant and the deceased on the fateful day i.e. 16.03.2015.

12. The learned counsel for the petitioner has also informed the Court that out of the 17 prosecution witnesses whose evidence has been recorded upto date absolutely no evidence has come up against the petitioner. This fact has been admitted by the learned counsel for the

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complainant as well. Thus, the order of summoning of the petitioner cannot be sustained.

13. Lastly, it may be pointed out that the order of summoning does not contain any reasoning whatsoever as to why the Court found that the evidence against the petitioner was sufficient to summon him as an additional accused. On the contrary, the Court has only stated that efforts were made to arrest the petitioner and an application for issuance of arrest warrant had been moved but till date the petitioner has not been arrested. Therefore, if the accused was not summoned, the challaned accused would go on and if the petitioner was arrested thereafter, it would prolong the proceedings. This reasoning as has been pointed by the learned counsel for the petitioner cannot be the reasons to summon the petitioner. It would be reiterated here that as per Section 319 Cr.P.C., for an accused to be summoned as an additional accused, there must be cogent and admissible evidence, which appears from the examination of any witness in Court and mere supposition or presumptions of the guilt of an accused cannot be a ground to summon the said accused.

14. In view of the aforesaid discussion, the present petition is allowed and the summoning order dated 12.02.2016 is hereby quashed.

(JASJIT SINGH BEDI)
JUDGE

15.03.2022
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No