

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-831-2021 (O&M)

Date of Decision: 10.03.2022

Jitender

....Petitioner(s)

Versus

State of Haryana and another

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Jitender Dhanda, Advocate, for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

Mr. Shakti Paul Sharma, Advocate, for respondent No.2.

JASGURPREET SINGH PURI, J.

The present revision petition has been filed impugning the order dated 13.07.2021 passed by the learned Additional Sessions Judge, Hisar, whereby the application filed by the complainant/petitioner through the State under Section 319 of the Code of Criminal Procedure has been dismissed. The said application was filed for the purpose of summoning of respondent No.2 namely Rajbir son of Shamsher.

On 27.01.2019 an FIR was registered under Sections 302 and 34 IPC at Police Station Sadar, Hisar on the basis of the complaint made by the petitioner namely Jitender by stating that his sister is married with one Rajender for the last 22 years and they are residing at Defence Colony, Gate No.4, Cantt. Hisar and after marriage they had been fighting among themselves and they have tried to make them understand on various occasions. However on 26.01.2019 after completing his duty when he went

to his home, he received an information that the accused Rajender who is husband of his sister was fighting with his sister and at 6.00 P.M. when he reached at his sister's home, then she was lying on floor of the living room and was in a torment condition and she had sustained injuries on both her hands, shoulders, on the left foot, chest and on the back and when he asked his sister regarding the incident, she told him that after Ujjwal left for tuition, then her brother-in-law namely Rajbir (respondent No.2) caught hold of her and Rajender gave her hammer blow on her chest, hands, feet and on many parts of the body, Thereafter, she died due to the injuries. Thereafter, the police investigated the matter and found that respondent No.2 was innocent and, therefore, he was not challaned. During the recording of evidence the prosecution examined the petitioner-complainant namely Jitender as PW1 who reiterated his allegations as made in the FIR. Thereafter, on the basis of the aforesaid statement of the petitioner an application was moved by the complainant through Public Prosecutor under Section 319 of the Code of Criminal Procedure for summoning of respondent No.2 Rajbir. This application was considered by the learned Additional Sessions Judge-cum-Judge Special Court for Heinous Crime against women, Hisar and was dismissed vide impugned order dated 13.07.2021.

It has been submitted by the learned counsel for the petitioner that there was a strong evidence against respondent No.2 with regard to his involvement in the offence and he has been specifically named in the FIR and, therefore, the police had wrongly exonerated respondent No.2. He further submitted that respondent No.2 is brother of aforesaid Rajender who is husband of the sister of the complainant-petitioner and he was also present

at the time when the offence had taken place and, therefore, there were strong reasons for the learned Additional Sessions Judge to have summoned respondent No.2 as an additional accused.

On the other hand, Mr. Shakti Paul Sharma, learned counsel for respondent No.2 has submitted that respondent No.2 has been falsely implicated in the present case by the petitioner and was rightly exonerated by the police and, therefore, the application filed under Section 319 of the Code of Criminal Procedure has been rightly dismissed by the learned Additional Sessions Judge. He further submitted that so far as the respondent No.2 is concerned, he is brother of Rajender and Rajender is the accused in the present case and so far as the respondent No.2 is concerned, he is living separately and is retired from Army and his son is also serving as a Major in the Indian Army and both Rajbir and his wife are running a shop of cosmetics in Hisar Cantt. Complex and their house is also at a distant place from that of the accused Rajender. He further submitted that respondent No.2 and his family do not interfere in the family life of the accused Rajender as Rajender may be having his matrimonial dispute with his wife and he has been falsely implicated by the petitioner only in order to harass him. He further submitted that even otherwise also there is no motive attributable to respondent No.2 as to why he would commit such an offence when there was a matrimonial dispute between husband and wife. He further submitted that there was no new evidence or material available before the Court and the statement made by the petitioner before the Court was only a repetition of the allegations made in the FIR. He further submitted that for the purpose of summoning of an accused under Section 319 of the Code of Criminal Procedure there has to be a more than *prima*

facie case and a very strong evidence for summoning an additional accused which is absent in the present case. He has therefore prayed for the dismissal of the present petition.

I have heard the learned counsel for the parties.

The petitioner had lodged an FIR in which allegations were pertaining to death of his sister and in the FIR it was alleged that his sister had told that her husband namely Rajender and respondent No.2 have killed her. The learned Additional Sessions Judge while dealing with the application under Section 319 of the Code of Criminal Procedure had observed that when the police investigated the matter it found Rajbir (respondent No.2) as innocent and, therefore, he was not challaned and during the course of recording of the evidence the petitioner-complainant reiterated his allegations made in the FIR and there was no evidence against respondent No.2 except the statement made by the petitioner-complainant to establish his complicity. The learned Additional Sessions Judge had further observed that though this statement may create some suspicion against Rajbir (respondent No.2) but it is not sufficient to summon him as an additional accused and that mere statement of the complainant ipso facto cannot form the basis of summoning a person under Section 319 of the Code of Criminal Procedure and that now a days there is a trend to implicate the family members of the accused so as to make other party feel humiliated. It was further observed that in the evidence of the petitioner-complainant he has admitted that respondent No.2 is an ex-army man and son of respondent No.2 is serving Major in Indian Army and both Rajbir and his wife are running a separate business and living in a separate house and, therefore, all these facts show that Rajbir and his family has nothing to do

with the dispute between the accused and the deceased.

The law with regard to summoning of an additional accused under Section 319 of the Code of Criminal Procedure has been discussed in detail by a Constitution Bench of the Hon'ble Supreme Court in ***Hardeep Singh Versus State of Punjab and others [2014(3) Supreme Court Cases 92]*** and it was observed that Section 319 Cr.P.C is a discretionary and extraordinary power and it is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. The Hon'ble Supreme Court further observed that 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. It is only when 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. The Hon'ble Supreme Court further held that 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. 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”.

Thereafter in another judgment the Hon’ble Supreme Court in ***Ramesh Chandra Srivastava Versus State of U.P and another [2021(4) RCR (Criminal) 219]*** again reiterated the same proposition of law.

In the present case a perusal of the allegations against respondent No.2 in the FIR as well as in the deposition made by the petitioner vide Annexure P-5 would show that the deceased was the wife of accused namely Rajender and so far as respondent No.2 who is sought to be summoned is the brother of the aforesaid Rajender and is retired from Army and his son is serving as a Major in the Indian Army. Both the brothers are living separately and having their own business and they do not live in the same street. It is only on the basis of the statement made by the complainant that the name of respondent No.2 figured in the FIR but there is nothing on the record to show that as to whether the respondent No.2 had any motive in the present offence. Even as per the FIR there was a continuing dispute between Rajender and his wife. The police while during investigating the case exonerated respondent No.2 and thereafter, the application was filed under Section 319 of the Code of Criminal Procedure

for summoning of respondent No.2 as an additional accused. Apart from the statement of the complainant-petitioner there was nothing on the record to show that whether there was any further strong or cogent evidence available to connect the respondent No.2 with the present offence. In other words, there is no other evidence against respondent No.2 apart from the statement made by the complainant which itself alone cannot be sufficient to summon the respondent No.2 as an additional accused in the present case.

In view of the aforesaid law laid down by the Hon'ble Supreme Court while dealing with the application under Section 319 Cr.P.C, more than prima facie case has to be established and an accused should not be summoned merely by adopting a casual approach.

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, Hisar 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.

10.03.2022

rakesh

(JASGURPREET SINGH PURI)
JUDGE

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