

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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CRR No.2252 of 2017 (O&M)

Reserved on:12.05.2022

Pronounced on:31.05.2022

Sher Ali

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Ms. Parul Aggarwal, Advocate for
Ms. Harjot Kaur, Advocate
for the petitioner.

Ms. Deepshikha Chauhan, AAG, Haryana
for respondent No.1.

None for respondents No.2 to 7.

SUVIR SEHGAL J.

Vide the instant petition filed under Section 401 of the Code of Criminal Procedure, 1973 (for short “the Code”), the petitioner has challenged order dated 26.04.2017, whereby, an application filed under Section 319 of the Code for summoning additional accused, has been declined by learned Additional Sessions Judge, Nuh.

Facts leading to filing of the present petition are that a complaint was received from the Court of JMIC, Ferozepur Jhirka under Section 156(3) of the Code in Police Station Punhana on the allegation by Sher Singh, present petitioner, that his daughter, Sehruna was married to Jahid as per muslim rites and ceremonies and gave birth to a child. However, her husband, father-in-law, Aamin, brother-in-law, Hakam and other relatives namely, Arshida, Baskar, doubted her paternity and killed the

child within five months of her birth. The matter was, however, dropped for the sake of marital harmony. It has been alleged that her in-laws have been physically assaulting her and she came back to her paternal home as the accused were alleging that she is in an illicit relationship. Accused, Aarif, used derogatory language on the phone against her. She tolerated this treatment for sometime and confided in the complainant. The complainant went to the village of her in-laws family with Hazi Fajru and Abdul Rehman, Ex-Sarpanch, to reason out with them, but he was insulted. Due to instigation by the accused, his daughter committed suicide by consuming a poisonous substance. He reported the matter to the police on 23.11.2014, but they did not take any action forcing him to file the complaint.

During the investigation, all accused, except Jahid, were found innocent and their names were kept in column no.2. On conclusion of investigation, final report was submitted under Section 173 of the Code against accused Jahid. Upon committal of the case to the Court of Session, charge under Section 306 IPC was framed against him on 30.08.2016 to which he pleaded innocence and claimed trial. After the examination-in-chief of Sher Ali, an application dated 09.09.2016 (Annexure P-3) was moved under Section 319 of the Code for summoning Aarif, Aamin, Hakam, Arshida and Baskar as additional accused, which was contested by filing reply (Annexure P-4). By order, impugned herein, the Trial Court has dismissed the application.

Counsel for the petitioner has challenged the impugned order by referring to the deposition of the complainant and has submitted that the accused are involved in a heinous offence.

State counsel, has submitted that during pendency of the instant petition, co-accused Jahid has been acquitted by the Trial Court, vide judgment dated 08.12.2017.

I have heard counsel for the parties and examined the paper book with their able assistance.

It has been held by the Hon'ble Supreme Court in **Labhuji Amratji Thakor Vs. State of Gujarat 2019(1) RCR (Criminal) 1** that the mere fact that Court has power under Section 319 of the Code to proceed against any person does not mean that the Court can mechanically issue process. The Court has to consider substance of the evidence, which has come before it and as laid down by the Constitution Bench in **Hardeep Singh Vs. State of Punjab (2014) 3 SCC 92** has to apply the test, i.e., “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.”

The matter has to be examined in the above backdrop of said settled legal position. It is evident from the deposition of the complainant (Annexure P-2) that it is a mere reiteration of the allegation levelled in the FIR. In his statement recorded with the police in June, 2020, when his daughter expired, the complainant had stated that she was residing with him and was ailing for quite some time. It has been mentioned by him that she was on medication and had accidentally consumed spray that caused her death. He had specifically stated that no one is responsible for her death. Six months later, he filed a petition under Section 156(3) of the Code and FIR (Annexure P-1) came to be registered on the order passed by the Magistrate.

In his deposition, he has not explained his earlier statement nor the delay in

approaching the Court. Moreover, co-accused, Jahid, has been acquitted from the charges levelled against him, vide judgment dated 08.12.2017 by the learned Additional Sessions Judge, Nuh. This Court is, therefore, satisfied that evidence on the record is not sufficient to bring home the guilt of the accused, who are being sought to be summoned. In view of the above discussion, this Court is of the view that there is no illegality or infirmity in the order passed by the Trial Court.

Petition sans merit and is hereby dismissed.

(SUVIR SEHGAL)
JUDGE

May 31, 2022
savita

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes