

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

215

CRR-1429-2019

Date of Decision: 09.11.2022

Soni

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Animesh Sharma, Advocate
for the petitioner.

Ms. Dimple Jain, AAG, Haryana.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Section 401 read with Section 482 Cr.P.C. is seeking setting aside of order dated 18.04.2019 passed by Additional Sessions Judge, Panipat whereby ASJ has dismissed the application of the petitioner filed under Section 319 of Cr.P.C.

2. Brief facts emerging from the record and necessary for the adjudication of the present petition are that one boy namely Monu was found dead at railway lines on 11.09.2017. The family members of the deceased lodged a complaint with police authorities alleging that Monu had been murdered by Mukesh, Dinesh, Chand, Danny @ Suraj @ Suraj and Vikas. It was averred that there was enmity between deceased and Chand, Danny @ Suraj and Vikas. Mukesh and Dinesh are friends of Chand, Danny @ Suraj and Vikas. Mukesh and Dinesh came at shop of father of deceased on 10.09.2017 at around 6.00 p.m. and took away Monu in the presence of father and brother of the deceased. The petitioner-sister of the deceased

made a call on the mobile of the deceased at 10.00 p.m. and deceased told her that he will return in 10 minutes. After a while, Monu called back and told that Dinesh and Mukesh are fighting with him on account of money borrowed by him. This time call was attended by brother of the deceased and not by the petitioner. Next morning around 6.30 a.m. one youth of their village informed the family of deceased that Monu's body has been found lying on the railway track.

3. GRP Panipat initiated proceedings under Section 174 Cr.P.C. and got conducted post-mortem of the deceased. The petitioner moved an application before CJM-cum-Secretary DLSA, Panipat who forwarded the complaint to GRP, Panipat. An FIR No.82 dated 18.09.2017 came to be registered, however, nobody was arrayed as accused. The police initiated investigation and during the course of investigation, arrested Vikas Kumar who in his statement confessed that he has strangled the deceased as there was quarrel between them on account of mobile set. The police after completing investigation filed its report (challan) under Section 173 Cr.P.C. wherein arrayed Vikas as an accused. The private respondents herein were not arrayed as accused.

4. The petitioner feeling aggrieved from non arraying of private respondents as accused moved an application under Section 319 Cr.P.C. before learned trial Court which came to be dismissed vide impugned order dated 18.04.2019. The petitioner has preferred present petition seeking setting aside of aforesaid order dated 18.04.2019 passed by learned ASJ, Panipat.

5. Learned counsel for the petitioner *inter-alia* contended :

(i) There is consistency in the statements of petitioner and

other family members qua alleged offence and role of respondents.

(ii) As per statement of gate/gang man of railway, he had seen three boys at 1.00 a.m. on 10.09.2017.

(iii) The statement of Vikas cannot be treated as sacrosanct as it is contrary to post-mortem report. As per statement of Vikas, he has strangled the deceased whereas there were multiple injuries on other parts of the deceased which belied statement of Vikas.

6. In support of his above arguments, learned counsel for the petitioner relied upon a Five-Judge Bench judgment of Hon'ble Supreme Court in *Hardeep Singh vs. State of Punjab and others, (2014) 3 SCC 92*. Learned counsel specifically relied upon paras No.85, 92 and 106 of the judgment to vindicate his stand that there is no need of cross-examination of witnesses and trial Court can summon any person as additional accused if from the evidence either documentary or oral, it comes out that proposed accused is part of the alleged offence.

7. Per contra, learned counsel for the State would contend that private respondents were produced before learned CJM and consent of the respondents was sought for conducting their polygraph test which was thereafter conducted. The police during the course of investigation has collected Call Details Record (CDR) which does not indicate involvement of the respondents in the commission of alleged offence. She further contended that the petitioner has not brought on record any additional evidence which could justify summoning of the private respondents.

8. I have heard arguments of both sides and perused the record.

9. From the perusal of FIR, challan and reply of the State, it comes out that Mukesh and Dinesh who as per petitioner were involved in

the commission of alleged offence were subjected to polygraph test. The CDR of all the persons named in the FIR was collected and CDR did not indicate involvement of the respondents in the commission of alleged offence of murder of Monu. The Hon'ble Supreme Court in the plethora of judgments including judgment cited by learned counsel for the petitioner in **Hardeep Singh's case (supra)** has categorically held that a person cannot be summoned mechanically and Court is supposed to examine the veracity of the additional evidence brought on record.

11. In the case in hand, the police has conducted thorough investigation and there is no allegation of bias against the police. Even otherwise, there is nothing on record to indicate that the private respondents are influential people or they had influenced the police officials. Learned trial Court has recorded categoric finding that no additional evidence has been brought on record which could compel the trial Court to summon the private respondents under Section 319 Cr.P.C.

12. In view of the above facts and circumstances, this Court is of the considered opinion that there is no ground to interfere with impugned order dated 18.04.2019 passed by learned ASJ, Panipat. The petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

09.11.2022
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>