

In the High Court for the States of Punjab and Haryana at
Chandigarh

Date of Decision: July 18, 2022

1) CRR-1639-2019 (O&M)

Narinderpal Singh and another ... *Petitioners*

Versus

State of Punjab and another ... *Respondent*

2) CRR-1642-2019 (O&M)

Amarjit Singh and another .. *Petitioners*

Versus

State of Punjab ... *Respondent*

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Harsh Aggarwal, Advocate,
for the petitioners (in CRR-1639-2019)

Mr. P.S. Ahluwalia, Advocate,
for the petitioners (in CRR-1542-2019)

Ms. Ruchika Sabherwal, AAG, Punjab.

None for respondent No.2.

Vivek Puri, J.

The afore-said criminal revision petitions i.e. CRR-1639-2019 and CRR-1642-2019 have been preferred against the order dated 04.07.2019 passed by the Court of learned Additional Sessions Judge, Patiala, vide which the petitioners have been summoned to face trial on the application under Section 319 of the Code of Criminal Procedure (for short `Cr.P.C.'). As both the petitions have

arising out of a common order, the same are being disposed of by a common judgment.

In both the aforesaid petitions, the petitioners have assailed the order dated 04.07.2019 passed by the Court of learned Additional Sessions Judge, Patiala vide which they have been summoned with regard to the commission of offence under Section 306 of the Indian Penal Code (for short 'IPC') on the application under Section 319 Cr.P.C.

Briefly, the FIR has been registered on the basis of the statement of Amrik Singh, the brother of the deceased. It has been alleged that the marriage of Balwinder Kaur, deceased, was solemnized with Charanjit Singh, about 28 years prior to the occurrence. Charanjit Singh, the husband of the deceased, died in the year 2009. The deceased was having a son, namely Narinderpal Singh, petitioner, who solemnized marriage with Jaspinder Kaur, petitioner, about one year prior to the occurrence. After the marriage, the petitioners along with Ujjagar Singh and Rajinder Kaur, the father-in-law and mother-in-law, respectively of the deceased started leveling allegations of loose character against the deceased. Ujjagar Singh, the father-in-law of the deceased has also instituted a suit against her due to which she remained disturbed. On

account of harassment, she committed suicide by setting herself on fire on 09.02.2018.

On the basis of the statement of Amrik Singh, FIR bearing No. 8, dated 09.02.2018, under Sections 306, 120-B IPC, was registered at Police Station Sanour, Patiala. However, during the course of investigation, the petitioners were found innocent and the challan was presented against Ujjagar Singh and Rajinder Kaur, the father-in-law and the mother-in-law, respectively of the deceased.

During the course of trial, the statement of Amrik Singh, PW1 i.e. the complainant and bother of the deceased was recorded and in terms of the impugned order, the petitioners have been summoned by invoking the provisions of Section 319 Cr.P.C.

I have heard learned counsel for the parties and perused the record.

Learned counsel for the petitioners contend that the proceedings against the petitioners were stayed in pursuance of interim order of this Court. However, the trial against the father-in-law and the mother-in-law of the deceased continued and has culminated in acquittal in terms of the judgment dated 08.04.2022 passed by the Court of learned Additional Sessions Judge, Patiala. Consequently, it has been sought to be argued that the petitioners now cannot be tried for the commission of

offence under Section 306 IPC and even material on record is not sufficient to justify summoning of the petitioners as per the provisions of Section 319 Cr.P.C.

On the contrary, the learned State counsel has submitted that the order vide which the petitioners have been summoned under Section 319 Cr.P.C. was passed during the pendency of the trial and consequently, the conclusion of trial cannot be termed to be a circumstance to stand in way for trial of the petitioners for having committed an offence under Section 306 IPC.

Be that as it may, even the impugned order when examined on merits and on evaluation of the material on record, the same stand short of demanding degree of proof required to summon the additional accused as per the provisions of Section 319 Cr.P.C.

The provisions of Section 319 Cr.P.C. empowers the Court to proceed against any person not shown or mentioned as accused, if it appears from the evidence that such person has also committed an offence for which he could be tried together with the main accused. The object of Section 319 Cr.P.C. is to ensure that no one who appears to be guilty escapes the trial. The power exercisable under this Section is an extra ordinary power conferred on the Court to advance real and substantial justice. It is required to be used with care, caution, circumspection and only if

compelling reasons exist for proceeding against a person against whom no action has been initiated. Furthermore, there must be strong and cogent evidence indicating the involvement of those persons in the commission of crime.

The Constitution Bench of the Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab and others, (2014) 3 SCC 92**, has observed as following:-

“105. Power under Section 319 CrPC 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 un rebutted, would lead to conviction. In the absence of such satisfaction,

the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if “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 CrPC to form any opinion as to the guilt of the accused.”

In **Ramesh Chandra Srivastava Vs. State of U.P. & another, 2021(4) RCR (Crl.) 219 (Supreme Court),**

it has been held as following:-

“The test as laid down by the Constitution Bench of this Court for invoking power under Section 319 Cr.P.C. inter alia includes the principle that only when strong and cogent evidence occurs against a person from the evidence the power under Section 319 Cr.P.C. should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by this Court, is one which is more than prima facie case which is applied at the time of framing of charges.”

Furthermore, in **Sagar Vs. State of U.P. and another, 2022(2) RCR (Crl.) 344 (Supreme Court)** it has been observed as following:-

“The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which

should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above 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.”

Section 319 Cr.P.C. confers power on the trial Court to find out as to whether a person ought to have been committed as an accused has erroneously been omitted or has been deliberately excluded by the investigating agency and satisfaction has to be arrived at on the basis of the evidence so adduced during the course of trial. The power under Section 319 Cr.P.C. is discretionary and such discretion has to be exercised judiciously having regard to the facts and circumstances of the case. The power is extraordinary and is to be used sparingly and only if compelling circumstances exists.

Before proceeding further, it shall be appropriate to recapitulate that Narinderpal Singh and Jaspinder Kaur, the petitioners in CRR-1639-2019 are the son and daughter-in-law, respectively, of the deceased. Amarjit Singh and Paramjit Kaur, the petitioners in CRR-1642-2019 are the brother-in-law (Dever) and sister-in-law (Devrani), respectively, of the deceased.

Ujjagar Singh and Rajinder Kaur, the father-in-law and the mother-in-law, respectively of the deceased faced trial and have been acquitted by the trial Court in terms of the judgment dated 08.04.2022. The allegations attributed to the petitioners and the accused who faced trial were to the effect that they have been leveling allegation against the character of the deceased. Furthermore, additional allegation was leveled against Ujjagar Singh, the father-in-law of the deceased to the effect that he had instituted a civil suit against the deceased. The allegations with respect to civil suit have not been attributed against the petitioners. Copy of the judgment passed by the trial Court while acquitting Ujjagar Singh and Rajinder Kaur has been placed on record. The relevant portion of the judgment is reproduced herein below:-

“...In the investigation, police has declared all the persons innocent except Ujjagar Singh and Rajinder Kaur and challan against them has been presented. If statement of PW1 Amrik Singh and PW2 Mohinder Singh are gone into, coupled with report u/s 173 Cr.P.C, then, it is found that as per report, there is no mention of any date just prior to commission of suicide by Balwinder Kaur on which, act of instigation has been committed by the accused abetting Balwinder Kaur to commit suicide. The accused have not denied the fact that initially, after death of husband of Balwinder Kaur, there

arose dispute as deceased used to leave the house at odd hours and even as per accused, suit has been filed for permanent injunction. As per defence of the accused, in that suit, compromise was effected. File of that civil suit filed by accused against Balwinder Kaur has also been summoned and attached with the trial court in which, compromise dated 15.4.2017 is attached, which was signed by Balwinder Kaur, Amrik Singh and father of Amrik Singh namely Hardev Singh, apart from son Narinderpal Singh and father-in-law Ujjagar Singh and other respectable of the village. Though, in the cross-examination, Amrik Singh has denied his signatures and signatures of his sister Balwinder Kaur, but accused in the defence evidence, have examined DW1 Inderjit Singh, Handwriting and Fingerprints Expert, who has given his report after comparing signatures of Balwinder Kaur on the compromise with her admitted signatures and given report Ex.DW1/1. After that compromise, there is no evidence on file that dispute persisted and even no complaint to anybody was ever made. On this point, when, Amrik Singh was cross-examined, then, he has stated that from period of 2009 i.e. year, when husband of Balwinder Kaur died, till death of Balwinder Kaur, no dispute of any kind between her and her in laws went to police station. No Panchayat was convened. Meaning thereby, if the statement of Amrik Singh is believed, then, there was no dispute of any kind between in laws family of Balwinder Kaur and Balwinder

Kaur. There is no evidence on file that just before the date, when, suicide was committed i.e. 9.2.2018, there was any dispute between accused and deceased Balwinder Kaur and any type of defamatory allegations made by accused, have been mentioned by any of the witnesses examined by the prosecution. Thus, prosecution has failed to prove any positive act by the accused, which instigated commission of suicide by Balwinder Kaur. If any previous occurrence is to be considered, which resulted into filing of civil suit by accused, then, it has taken place in the year 2017 i.e. on 15.4.2017 and suicide was committed on 9.2.2018. So, period of almost 10 months has passed with regard to that occurrence. It cannot be said to be act of instigation by the accused is proximate to commission of suicide by Balwinder Kaur....”

The petitioners have been summoned on the basis of the statement of PW1 Amrik Singh, but subsequently, further evidence was also led. The case of the prosecution against the accused, who faced trial, was found to be not free from reasonable doubt and accordingly, they have been acquitted. It has been observed by the learned trial Court that there was lack of material in proximity with the occurrence which instigated her to commit suicide. Even the allegation with regard to the institution of civil suit was found to be stale. Ujjagar Singh and Rajinder Kaur have

been acquitted on the basis of the evidence upon which the petitioners have been sought to be summoned.

In these set of circumstances, it cannot be said that the material on record would indicate that something more than a prima facie case is coming forth against the petitioners, which could justify their summoning for having committed the offence under Section 306 IPC by invoking the provisions of Section 319 Cr.P.C. No act or overt act is made out on the part of the petitioners that too in close proximity which could indicate that they had abetted the commission of suicide.

For the aforesaid reasons finding sufficient merit in both the revision petitions, the same are accepted. The impugned order dated 04.07.2019 is set aside.

Both the aforesaid criminal revision petitions are allowed, accordingly.

July 18, 2022
vkd

[Vivek Puri]
Judge

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes