

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

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**CRR-1467-2021 (O&M)
Date of decision: 17.02.2022**

RAM BHATERI

.....Petitioner

Versus

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Surinder Gaur, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

CRM-41219-2021

For the reasons mentioned in the application, the same is allowed and statement of Ram Bhateri (complainant) is taken on record as Annexure P-2.

CRR-1467-2021

The petitioner is impugning the order dated 23.09.2021 vide which the learned Additional Sessions Judge, Sonipat dismissed an application filed under Section 319 Cr.P.C. by the prosecution to summon respondents No.2, 3 and 4 (father-in-law, mother-in-law and brother-in-law respectively of deceased Meena) to face trial as an additional accused in case FIR No.144 dated 22.06.2020 under Sections 306, 304-B and 506 IPC registered at Police Station HSIIDC, Barhi (Sonipat).

Learned counsel for the petitioner *inter alia* contends that the marriage of her two daughters i.e. Meena (since deceased) (hereinafter referred to as 'the deceased') and Kavita was solemnized with accused Deepak and respondent No.4 Ankit on 27.06.2018. Even

though she had given sufficient dowry, however, the accused including the private respondents were dissatisfied and as a result of which her daughters would be subjected to continuous physical and mental harassment. Due to the continuous harassment meted out to her daughters, the petitioner visited their matrimonial home and tried to pacify the accused including the private respondents but in vain as they did not mend their ways. On 18.05.2020 at about 01:00 A.M., the petitioner and her family were telephonically informed that their daughter Meena had consumed some poisonous substance and died in her matrimonial home. Learned counsel submits that no doubt the petitioner and her family did not level any allegations against the accused on the date of alleged occurrence, however, it had to be appreciated in the light of the petitioner's condition on losing her young daughter. He further submits that it was on the *tehrvi* (13th day ceremony), the accused including the private respondents indulged in abusive behaviour with the petitioner and did not even shy away from declaring that they had murdered the deceased. It was also submitted that just a few days after the *tehrvi* ceremony, her other daughter Kavita was left at her parental home by respondent No.4 and it was then that she learnt as to how the deceased had met her end. It was submitted that as soon as the real facts came to the knowledge of the petitioner, she without wasting any time got the FIR in question registered on 22.06.2020. Learned counsel argued that while passing the impugned order, the trial Court gravely erred in not appreciating that the petitioner had levelled specific and serious allegations against all the accused including the private respondents of mentally and physically torturing

her daughters including the deceased, which were reiterated by her during trial when she stepped into the witness box as PW-1. In support, learned counsel invited the attention of this Court to the deposition of the petitioner annexed as Annexure P-2. Rather, learned counsel submitted that it was not even a case of suicide as had been made out by the investigating agency in collusion with the accused party but was a case of murder. A prayer was, therefore, made to set aside the impugned order and summon the private respondents as additional accused under Section 319 Cr.P.C. to face trial along with accused Deepak-husband of the deceased.

I have heard learned counsel for the petitioner and perused the relevant material placed on record.

At the very outset this Court has no hesitation to observe that the approach of the learned trial Court in declining the prayer for summoning of the private respondents as additional accused does not suffer from any infirmity whatsoever. The power vested in a Court under Section 319 Cr.P.C. being discretionary, has to be exercised with a great deal of circumspection after giving due regard to the facts and circumstances of the case coupled with the evidence on record led during trial. Hence this power has to be exercised only to advance the cause of criminal justice and not as a tool to harass a person who may not even appear to be prima facie involved in the commission of a crime.

Adverting to the case in hand, it would be relevant to notice some undisputed facts. The death of the deceased took place on 18.05.2020 and on being so informed the petitioner and her family

reached the matrimonial home of her deceased daughter and even participated in the proceedings conducted by the police under Section 174 Cr.P.C. In the proceedings conducted under Section 174 Cr.P.C. no allegations were levelled with respect to the alleged mental and physical torture inflicted on her daughters including the deceased by anyone from the family of the complainant. Rather it is a matter of record that father of the deceased and husband of the petitioner/complainant had in his statement recorded at the time of inquest proceedings, stated that the deceased had committed suicide by consuming poison as she had been in depression for being unable to conceive a child. Still further, the complainant party even attended the funeral of the deceased but at no stage during the funeral was any suspicion raised qua the involvement of the private respondents in the crime in question. The matter does not end here. Though as per the version of the petitioner, when she went to attend the *tehrvi* ceremony of the deceased, she and her family were abused by the accused who declared openly that they had murdered her daughter, yet she kept totally mum and did not contact any authority much less police in the said regard. Still further, as per the version of the petitioner-complainant herself, after her other daughter Kavita, was left at her parental house just a few days after the *tehrvi* ceremony, she learnt about the circumstances under which the deceased died, however, strangely enough even at that point in time the complainant party did not take any steps to approach the police and chose to sit over the matter. It was only much later on 22.06.2020 i.e. after more than a month, the complainant got the FIR in question lodged on 22.06.2020.

The Constitution Bench of the Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab and others : 2014(3) SCC 92*** while dealing with the provisions of Section 319 Cr.P.C. and powers of the Court has categorically held as under:

"98. Power under Section 319 Cr.P.C. is a discretionary and an extra- ordinary 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.

99. 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 Cr.P.C. In Section 319 Cr.P.C. 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 Cr.P.C. to form any opinion as to the guilt of the accused."

Thus, what flows from the settled law in Hardeep Singh's case (supra) is that unless there is a reasonable possibility of the case against the persons being sought to be summoned as additional accused, ending in conviction for the offence concerned, the Court should refrain from summoning them under Section 319 Cr.P.C.

As a sequel to the above discussion, this Court is not inclined to invoke its revisional jurisdiction to set aside the impugned

order. Accordingly, the instant revision being devoid of any merit, is dismissed.

However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

17.02.2022

(MANJARI NEHRU KAUL)

JUDGE

Vinay

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No