

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-196-2022**Date of Decision: 03.02.2023**

Sushil Kumar & Ors.

... Petitioners

VS.

State of Haryana & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Ms. Ramandeep Kaur, Advocate for the petitioners

Mr. Ashok Kumar Sehrawat, DAG Haryana

Mr. Rohit Kaushik, Advocate for respondent No.2

Sandeep Moudgil, J.

This criminal revision petition has been preferred by the petitioners against the order dated 04.01.2022 passed by the Addl. Sessions Judge, (Exclusive Court for Heinous crimes against Women), Yamuna Nagar at Jagadhari, vide which the petitioners have been summoned to face trial for commission of offences under Sections 148/149/302 IPC in case FIR No.158 dated 22.10.2019, registered at Police Station Sadhaura, Yamuna Nagar at the instance of respondent No.2.

Brief facts of the case are that on 22.10.2019, the complainant Dharampal got recorded his statement that the marriage of his elder sister Karamjeet was solemnized with Dharambir son of Sewa Ram resident of Sadhaura around 8 years ago. She was having three children out of her wedlock with Dharambir. After the marriage, Dharambir and his family members allegedly used to harass her sister. On 22.10.2019, he received a telephonic call from Sukhwinder (jethani) wife of Sushil (jeth) asking her to reach the matrimonial home of Karamjeet (deceased) immediately, and upon

reaching there he found Karamjeet lying dead on her bed and there were rope marks on her neck along-with injury marks on her hands and legs. He also averred that his sister Karamjeet was strangled by his brother-in-law Dharambir son of Sewa Ram, Sewa Ram (since deceased father-in-law), Nirmala (mother-in-law), Sushil (jeth), Sukhwinder (jethani), Vijay (dever), Asha (devrani) and cousin brother of Dharambir namely Subhash. An FIR was lodged under Sections 148, 149 and 302 of IPC, against all the above-named persons. After completion of investigation, only Dharambir was challaned by the police and the remaining persons were kept in column No.2 and were declared innocent.

Thereafter, an application under Section 319 CrPC was moved by the complainant for summoning the petitioners to face trial and the said application has been allowed vide the impugned order, on the ground that the cause of death as per post-mortem report was asphyxia and the other family members viz. the petitioners also used to live along with them at the time of death of the deceased Karamjeet and that merely on the basis of tower location, it cannot be concluded that the petitioners were not present at the spot of occurrence.

Learned counsel for the petitioners contended that the court below has erred in passing the impugned order by allowing summoning of the petitioners, as the investigating agency, after going through the evidence and conducting investigation, at the place of incident, found the petitioners innocent and therefore, did not charge-sheet the petitioners.

Learned counsel for the petitioners further argued that mere presence of persons, at the place of incidence or residing in the same house,

does not give any inference that each and every person is involved in the alleged offence unless and until any specific allegation or role is attributed to the persons. The Court below has wrongly placed reliance on the statement of the complainant and overlooked the documentary evidence.

It is further contended that the court below has failed to apply its judicious mind that the cause of death, as per the post-mortem report was 'asphyxia', due to strangulation, is the opinion and the actual/final cause of death will be determined only after receiving the reports from Chemical Examiner. That apart, the FSL report of the rope which was allegedly used in the offence, also came negative, resultantly, no *prima facie*, case of death due to strangulation is made out against the petitioners.

On the other hand, learned counsel for respondent No.2 submitted that the petitioners deserve to be summoned to face trial as they were hand in glove in the suicide of sister of respondent No.2 (now deceased). He further argued that specific allegations were levelled against the petitioners for the commissioning of offence under Sections 148, 149 and 302 of IPC and the evidence adduced by the complainant is sufficient to bring on record the guilt of the petitioners. He further submitted that the PMR specifically states that the death of the deceased was a result of strangulation and the probable duration between the postmortem examination (23.10.2019 at 11.55 A.M.) and the death of the deceased was within 4 to 36 hours. He further averred that the petitioners were residing in the same house along with the deceased and the accused facing trial and their call details are not of the entire 36 hours prior to the postmortem examination and hence no definite

conclusion can be drawn regarding the plea of *alibi* taken by the prosecution on behalf of the petitioners which itself hints towards tainted investigation.

I have heard learned counsel for the parties and gone through the record.

Before proceeding with the matter, it is apposite to reproduce what has been contemplated in [Section 319](#) CrPC, which reads as under:-

“....Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the Accused has committed any offence for which such person could be tried together with the Accused, the Court may proceed against such person for the offence which he appears to have committed.”

The Constitution Bench of the Supreme Court in ***Hardeep Singh vs. State of Punjab, (2014) 3 SCC 92***, while illuminating the scope of Section 319 Cr.PC, laid down that:-

“57. Thus, the application of the provisions of Section 319 CrPC, at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 CrPC can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to herein above, adding a person as an accused, whose name has been mentioned in Column 2 of the chargesheet or any other person who might be an accomplice.”

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“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 **Hardeep Singh** (supra), the Supreme Court eloquently held that the word “evidence” in Section 319 CrPC has to be broadly understood and thus materials which have come before the Court, in course of enquiry, can be used for (i) corroboration of evidence recorded by Court after commencement of trial; (ii) for exercise of power under Section 319 Cr.P.C.; and (iii) also to add an accused whose name is shown in column no.2 of the chargesheet.

In *Sukhpal Singh Khaira vs. The State of Punjab, (2023) 1 SCC 289*, the Supreme Court succinctly explained the powers bestowed on the Court under Section 319 CrPC and ruled that:-

“15. At the outset, having noted the provision, it is amply clear that the power bestowed on the Court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the Court, if it appears to the Court that such evidence points to any person other than the accused who are being tried before the Court to have committed any offence and such accused has been excluded in the charge sheet or in the process of trial till such time could still be summoned and tried together with the accused for the offence which appears to have been committed by such persons summoned as additional accused.”

The Constitution Bench refreshed the guidelines which, the competent court, must follow while exercising powers under Section 319 CrPC and further ruled that:-

(i) if the competent court finds evidence or if application under Section 319 Cr.P.C. is filed, regarding involvement of any other person in committing the offence based on evidence “recorded at any stage in the trial” before passing of the order on acquittal or sentence, it shall pause the trial at that stage and the Court shall proceed to decide the fate of the application under Section 319 Cr.P.C.;

(ii) if the Court decides to summon an accused under Section 319 Cr.P.C., such summoning order shall be passed before proceeding further with the trial in the main case and depending upon the stage at which the order is passed, the Trial Court shall apply its mind to the fact as to whether such summoned accused is to be tried along with other accused or separately; and

(iii) if the power under Section 319 Cr.P.C. is not invoked or exercised in the main trial till its conclusion and if there is a splitup case, such power can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the splitup (bifurcated trial).

After analyzing the *dicta* of the Constitution Benches in **Hardeep Singh** (supra) and **Sukhpal Singh Khaira** (supra), the Supreme Court in **Juhru v. Karim, 2023 SCC OnLine SC 171**, unequivocally held that:-

“17. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a prima facie case is sine qua non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 Cr.P.C., and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material is, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 Cr.P.C. ought not to be invoked.”

It, thus, comes out that the power of summoning under Section 319 CrPC is not to be exercised in a routine manner and the existence of more than a *prima facie* case is *sine qua non* to summon an additional accused and with a view to prevent the frequent misuse of power to summon, ordinarily,

the Court should also discourage itself from summoning the person, at the very threshold of the trial, and must evaluate such material which has to be testified vis-à-vis the material against the accused who is already facing trial. In the absence of any credible evidence, the power under Section 319 CrPC, ought not to be invoked.

In the present case, a perusal of the FIR would show that no specific attribution has been made against any of the petitioners. Only general allegations of beatings have been alleged in the FIR and that too against the family members but not against any specific person and without specifying role. If, one goes through the note (Annexure P2) allegedly written by the deceased, it can be culminated that the deceased had matrimonial issues only with her husband Dharamvir and not with any other family members.

That apart, there is merit in the contention of learned counsel for the petitioners to contend that the trial court has wrongly inferred that not only the husband of the deceased but other family members also used to live along with them and as such they were hand in glove in strangulating the deceased. The fact that mere presence of persons at the place of incident or that they were residing at the same house, cannot be drawn against them inasmuch as, no specific allegation of beating and cruelty i.e., mental or physical, has been attributed against the petitioners, who are distant relations. There was nothing on record, either before the trial court or before this Court to show that there was any credible evidence to connect the petitioners with the unnatural death of Karamjeet.

The Court below also wrongly overlooked the material facts i.e. the FSL report of the rope recovered on the statement of the deceased husband namely, Dharamvir before the police officials allegedly used in the commissioning of offence and that nothing adverse has been found so far in the FSL report dated 04.12.2019 (Annexure P5) which is supported by the statement of PW2 Suresh Kataria, SSA Biology Division, Madhuban, Karnal (Annexure P4).

Even otherwise, there is no cogent material available on record to establish that any of the petitioners continued to reside in the house of in-laws of Karamjeet or that they used to intermeddle in the day-to-day marital life of the deceased and Dharambir. In the absence of any authentic evidence to bring them in close proximity of the reported crime and having not withstood the test as has been enunciated by the Supreme Court in Juhru's case (supra), it would be unjustified to sustain the order of the trial court calling upon the petitioners to face trial as additional accused.

It is for the trial court to evaluate the evidence against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weight and value, as has been testified against those already facing trial and in the absence of any credible evidence, the power under Section 319 CrPC ought not be invoked.

Having said that, this Court is not oblivious of the fact that in matrimonial cases, general and routine allegations are made with an ulterior motive to implicate whole of the family members of the in-law's, who, in no way, either reside in the same house and/or are connected, directly or indirectly with the matrimonial disputes of husband and wife. In today's

time, when people are remotely concerned with their own parents, in the wake of growing urbanization and depleting trend of joint families, the sweeping and general allegations against the mother-in-law, father-in-law, brothers-in-law, sisters-in-law (i.e. jeth, jethani, dever, devrani, nanand and nandoi etc.) and many other relations, has vogue in just to mentally harass and humiliate the all relations of in-laws of the deceased wife in matters of matrimonial/dowry deaths which is bound to be denigrated. It is only in their over enthusiasm and anxiety to seek conviction for maximum people that the parents of the deceased intentionally make efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused.

The Constitution Benches in **Hardeep Singh** (supra) and **Sukhpal Singh Khaira** (supra) have cautioned that power under Section 319 CrPC 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 un rebutted, would lead to conviction. It is imperative to add here that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 Cr.P.C., and in conformity with the binding judicial dictums referred to above. The procedural safeguard can be that ordinarily the summoning of a person, at the very threshold of the trial, may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material, more or

less, carry the same weight and value, as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 Cr.P.C. ought not to be invoked.

Accordingly, this petition is allowed and the order dated 04.01.2022 passed by the Additional Sessions Judge, Yamuna Nagar vide which the petitioners have been summoned to face trial for commission of offences under Sections 148/149/302 IPC, is hereby quashed.

Nothing expressed in this order shall be taken to be an expression of views on the merits of the case.

03.02.2023

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

(Sandeep Moudgil)
Judge

Yes/No

Yes/No