

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

1.

CRM-M-6152-2023
2023: PHHC: 146115

MANJINDER SINGH

. . . . Petitioner

Vs.

STATE OF PUNJAB

. . . . Respondent

2.

CRM-M-4532-2023
2023: PHHC: 146117

MANJINDER SINGH

. . . . Petitioner

Vs.

STATE OF PUNJAB AND ANOTHER

. . . . Respondents

Reserved on:09.11.2023
Pronounced on:17.11.2023

CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA

Present: - Mr. Pranav Handa, Advocate, for the petitioner.

Mr. M.S. Nagra, AAG, Punjab.

DEEPAK GUPTA, J.

This order shall dispose of two petitions as referred above as both of them have arisen out of the proceedings of same FIR.

2. In CRM-M-4532-2023, petitioner has prayed for quashing of the order dated 15.12.2022 (Annexure P1) passed by Id. Additional Sessions Judge, Jalandhar, whereby he has been summoned under Section 319 CrPC to face trial as an additional accused in Sessions case No.SC/49/2019 arising out of FIR No.32 dated 06.10.2018, registered at

Police Station Patara, District Jalandhar Rural, under Sections 302/201/34 IPC.

3. In CRM-M-6152-2023, petitioner has prayed for grant of anticipatory bail, after being summoned under Section 319 CrPC to face trial, in the aforesaid case.

4. FIR was lodged on the statement of Kuldeep Chhabra (*respondent No.2 in CRM-M-4532-2023*), as per which he and his paternal uncle Ramchand Chhabra (deceased) had lent money to some people. On 04.10.2018, his uncle told him that he was going to collect money from people and left home at about 11 O'clock on his Aactiva No.PB-08-DH-3465. He did not return home till evening. Mobile No.75080-35760 of his uncle Ramchand Chhabra was coming switched off. Complainant along with his nephew Sanjay Kumar went to the Police Station and lodged the missing report. It was further stated by the complainant that his uncle told him on number of occasions that he had lent some money to Ranjit Kaur w/o late Gurjeet Singh r/o village Johla, who was putting off the matter on one pretext or the other, whenever money was demanded from her and she had even given death threats. In search of his uncle, complainant and his nephew reached Gurudwara Sahib of Village Johla, where they noticed Aactiva of his uncle standing in the street and on enquiry, came to know that house of Ranjit Kaur was nearby the place, where they had found activa. Main gate of the house was locked from outside. Upon further enquiry, it transpired that Aactiva was standing there since 04.10.2018 evening. Complainant further told that his uncle had told him that whenever he used to ask money from Ranjit Kaur, she used to

threaten that she will kill him with the help of his friend Manjinder Singh (*petitioner in both the petitions*), posted in police and therefore, he was sure that his uncle Ramchand Chhabra had been killed by Ranjit Kaur with the help of her lover Manjinder Singh.

5. After registration of the FIR, investigation was carried out. Ranjit Kaur was arrested on 06.10.2018. During the course of investigation, she suffered disclosure statement that on 04.10.2018, Ramchand Chhabra (deceased) had come to her house, with whom she had illicit relations. Her son Harjap Singh caught them doing wrong act. Harjap Singh attacked Ramchand Chhabra with an iron angle on the back of his head, due to which he suffered injuries and died on the spot. Ranjit Kaur told further that she along with Harjap Singh got scared and took the body of Ramchand Chhabra to second floor, where they broke a wooden stool and covered the dead body with some cloths and burnt the dead body on an iron cot. Partially burnt dead body was hidden on the roof under stones. Ranjit Kaur disclosed further that murder of Ramchand Chhabra had been committed by her in connivance with her son Harjap Singh and no other individual was involved in the commission of the said crime and that name of Manjinder Singh had been wrongly implicated in the FIR because he was neither present at the time of commission of murder nor came to her house before or after the incident.

6. In view of the above said disclosure statement of Ranjit Kaur, her son Harjap Singh was arrayed as accused and arrested on 07.10.2018. He also suffered disclosure statement on the similar lines as that of Ranjit Kaur. Dead body of Ramchand Chhabra was recovered at their instance and

postmortem was got conducted. After thorough investigation, Manjinder Singh (petitioner in both the petitions) was found innocent. After concluding investigation, final report was submitted in the Court.

7. During trial against accused Ranjit Kaur and Harjap Singh, complainant Kuldeep Chhabra appeared in the witness box as PW1 and reiterated the FIR version to the effect that his uncle used to tell him that as and when he asked for return of money from Ranjit Kaur, she used to threaten that she will kill him with the help of her friend Manjinder Singh, who is in police and that he was sure that his uncle had been killed by both of them.

8. After the testimony of PW1 Kuldeep Chhabra, an application under Section 319 CrPC was moved by the complainant so as to summon Manjinder Singh, which was allowed by the Court of Id. ASJ, Jalandhar vide impugned order dated 15.12.2022 (Annexure P1 in CRM-M-4532-2023).

9. (i) Challenging the aforesaid order dated 15.12.2022 (Annexure P1 in CRM-M-4532-2023), it is contended by Id. counsel that petitioner has been falsely implicated on the basis of only a vague allegation that murder of Ramchand Chhabra was committed by Ranjit Kaur with his (petitioner's) help. It is contended that after thorough investigation, petitioner was found to be innocent, as it was found that at the time and date of occurrence, he was present at Golden Temple, Amritsar. Besides, the statements made by co-accused Ranjit Kaur and Harjap Singh supported the innocence of the petitioner.

(ii) Id. counsel further contends that impugned order has been passed by Id. trial Court, ignoring the legal position that there must be more than *prima facie* case to summon a person to face trial as an additional accused. However, in this case, except for the vague statement of the complainant to the effect that petitioner had helped Ranjit Kaur, there is no other evidence.

With these submissions prayer is made for setting aside the impugned order dated 15.12.2022.

10. Ld. State counsel, on the basis of status report filed by way of affidavit of Vijay Kanwar Paul, PPS, Deputy Superintendent of Police, Sub Division Adampur, District Jalandhar (Rural), concedes the fact that as per the investigation, petitioner was found innocent. Ld. State counsel submits that Court may pass the order, in accordance with law.

11. Respondent No.2-complainant (in CRM-M-4532-2023) was also served with notice. Despite his service through his mother for 24.02.2023, there is no representation on his behalf till date.

12. Having considered submissions of both sides and on perusal of paper book, I find merit in the present revision petition.

13. Section 319 Cr.P.C. reads as under: -

“319. Power to proceed against other persons appearing to be guilty of offence. — (1) 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.

(2) & (3) xxxxxxxxxxxx (not relevant)

(4) Where the Court proceeds against any person under sub-section (1),

then—

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

14. The issue regarding the scope and extent of power of the Court to arraign any person as an accused during the course of inquiry or trial in exercise of the power under section 319 Cr.P.C. has been set at rest by a Constitutional Bench of Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab, 2014 (1) R.C.R. (Criminal) 623** followed by another pronouncement in **Babubhai Bhimabhai Bokhiria and Another Vs. State of Gujarat and others, 2014 (2) RCR (Criminal) (SC) 915**.

15. After reviewing various precedents, Hon'ble Apex Court summarized the legal position in **Hardeep Singh's case (cited supra)** in the following words:

"Power under Section 319 Cr.P.C. 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.

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."

16. After referring to aforesaid authority of Constitutional Bench, Hon'ble Supreme Court held in **Babubhai Bhimabhai Bokhiria's case (cited supra)** as under:

"Section 319 of the Code confers power on the trial court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of prima facie case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher."

Same view has been reiterated in **Shiv Prakash Mishra vs. State of Uttar Pradesh 2019 (5) RCR (Criminal) 946**.

17. In the light of legal position as afore-said, when the factual matrix of this case is analyzed, it is seen that in the FIR recorded on 13.07.2018 on the statement of complainant Kuldeep Chhabra, who in his version itself had leveled specific allegation against the petitioner to the effect that he was also involved with co-accused in committing the murder of Ramchand Chhabra and that this fact was also disclosed by him during his testimony. Ld. trial Court appears to have been swayed by the fact that petitioner was serving in police, as if serving in the police is a crime; and thereafter observed that petitioner had been declared innocent despite being named in the FIR only on the basis of disclosure statement of the accused.

Holding that there was more than *prima facie* evidence against the petitioner, he was directed to be summoned by the trial court.

18. I am afraid that the reasoning given by the trial Court is not sustainable at all. Complainant Kuldeep Chhabra is not the eyewitness of the incident. As the FIR version clearly reveals that deceased Ramchand Chhabra had left home on 04.10.2018. It is only later on that when complainant along with his nephew went to the village of co-accused Ranjit Kaur, he found the Activa of deceased parked nearby the house of Ranjit Kaur. As per the FIR version, Ramchand Chhabra had told that Ranjit Kaur had extended threats to him to kill him with the help of her friend Manjinder Singh posted in police. Except for this version to the effect that Ranjit Kaur used to threat to the deceased that she will kill him with the help of her friend, there is absolutely no other evidence against the petitioner. The investigation, carried out by the investigating agency, found that as the deceased was in illicit relationship with Ranjit Kaur and they were found in compromising position by son of co-accused Ranjit Kaur, therefore, it is said son Harjap Singh, who hit iron angle on the head of Ramchand Chhabra resulting in his death. The mother and son duo also tried to burn the dead body on an iron cot. Partially burnt dead body was found on the demarcation of the co-accused. There is neither any allegation nor any evidence collected during investigation to the effect that petitioner was at or nearby the place of occurrence or helped the co-accused Ranjit Kaur and Harjap Singh in murdering Ramchand Chhabra in any manner, whatsoever. Thus, the test of more than *prima facie* case as laid down by Hon'ble Supreme Court in the case of *Hardeep Singh (Supra)* is not

satisfied in the present case so as to summon the petitioner as an additional accused to face trial.

19. Consequent to the entire discussion as above, the impugned order dated 15.12.2022 (Annexure P1 in CRM-M-4532-2023) cannot be sustained and as such, said order is hereby set aside.

Accordingly, CRM-M-4532-2023 is allowed.

20. Since order dated 15.12.2022 (Annexure P1 in CRM-M-4532-2023), whereby the petitioner was summoned as an additional accused under Section 319 CrPC to face trial in case FIR No.32 dated 06.10.2018, registered at Police Station Patara, District Jalandhar Rural, under Sections 302/201/34 IPC, has been allowed, therefore, the second petition CRM-M-6152-2023, seeking anticipatory bail by the petitioner, has been rendered infructuous.

Accordingly, CRM-M-6152-2023 stands disposed of.

17.11.2023
Vivek

(DEEPAK GUPTA)
JUDGE

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes
No