

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

CRR No.438 of 2023

Date of Decision: February 15, 2023

Kanwer Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Ankur Bansal, Advocate for the petitioner.

DEEPAK GUPTA, J.(Oral)

This revision is directed against the order dated 15.12.2022 passed by learned Additional Sessions Judge, Jalandhar in Sessions Case No.576/2018 arising out of case FIR No.120 dated 13.07.2018, under Sections 302, 201/34 and 120-B IPC, registered at Police Station Jalandhar, whereby application of the prosecution moved under Section 319 Cr.P.C. for summoning respondent No.2 Baksho as an additional accused, has been dismissed.

2. As per the FIR lodged on the statement of Kanwer Singh, on 12.07.2018 at about 3 p.m., his son Sukhjit Singh @ Sukhan (since deceased) went away from home. At 6.30 p.m., complainant was sitting near water tank on Bhardwajian Road, when he noticed his son on the motorcycle of Amarjit Singh at the water tank. The said motorcycle was being driven by his son; whereas Amarjit Singh and Pawan Kumar @ Pawani were sitting behind. Sukhjit Singh @ Sukhan did not return. On 13.07.2018, dead body of Sukhjit Singh @ Sukhan was found lying in the water channel with the injuries marks on throat and right wrist and other parts of the body. After registration of the FIR on 13.07.2018, statement (Annexure P3) of Kulwinder Kaur wife of Kanwer Singh, i.e.

mother of the deceased was recorded on 15.07.2018 under Section 161

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Cr.P.C., as per which her son had left home on 12.07.2018 at 3 p.m. and had come back at 4 p.m. and that at about 5 p.m., Baksho along with Amarjit Singh and Pawan Kumar @ Pawani had come and had taken Sukhjrit Singh @ Sukhan with them on the pretext of returning money, which was payable to him and later on dead body of Sukhjrit Singh @ Sukhan was found on 13.07.2018.

3. After investigation, police challaned Amarjit Singh S/o Dharampal and Rahul @ Pappu to prosecute them under section 302 and 201 read with Section 34 IPC. Trial began, during which Kanwer Singh, the author of the FIR appeared as PW1. After his statement, an application under Section 319 Cr.P.C. for summoning respondent No.2-Baksho wife of Dharampal was moved by the prosecution, which was dismissed by the Trial Court on 14.11.2019 (Annexure P7). Thereafter, statement (Annexure P8) of Smt. Kulwinder Kaur, mother of the deceased was recorded as PW2 and then fresh application under Section 319 Cr.P.C. was moved for summoning respondent No.2-Baksho wife of Dharampal as an additional accused, which has been dismissed by way of impugned order.

4. It is submitted by the petitioner that during investigation, Kulwinder Kaur had specifically stated that in her presence, Amarjit Singh, Pawan Kumar @ Pawani and Baksho had come to their house and had called Sukhjrit Singh @ Sukhan, who had accompanied them and thereafter, the dead body of her son was found on the next day. It is submitted further that same statement has been reiterated by Kulwinder Kaur before the Trial Court and therefore, the application under Section 319 Cr.P.C. has been wrongly dismissed simply for the reason that earlier

application had been dismissed because by the time of moving the earlier application, statement of Kulwinder Kaur, PW2 had not been recorded.

5. Having considered submissions of learned counsel for the petitioner, I find no merit in the present revision petition.

6. 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.”

7. 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.**

8. 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 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.

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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C."

9. 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.**

10. In the light of legal position as afore-said, when the factual matrix of this case is analysed, it is seen that in the FIR recorded on 13.07.2018 on the statement of father of the deceased, there is no mention of respondent No.2 Baksho with whom the deceased accompanied. It is for the first time that on 15.07.2018 i.e. after two days that Kulwinder Kaur, the mother of the deceased stated for the first time that deceased had accompanied respondent No.2-Baksho, Amarjit Singh and Pawan Kumar @ Pawani. Still further, in his testimony as PW1, Kanwer Singh, father of the deceased stated that on 12.07.2018 at 3 p.m. deceased left with respondent No.2-Baksho, Amarjit Singh and Pawan Kumar @ Pawani and then on the same day at about 6 p.m., he (PW1) had seen his son driving a motorcycle, on which Amarjit Singh and Pawan Kumar @ Pawani were the pillion riders.

11. Thus, for the sake of arguments even it be assumed that deceased had left on 12.07.2018 along with respondent No.2-Baksho, Amarjit Singh and Pawan Kumar @ Pawani at 3 p.m., the deceased was being accompanied only by Amarjit Singh and Pawan Kumar @ Pawani at 6 p.m. on the said day, which is the last seen evidence. Presence of respondent No.2-Baksho is not shown at that time.

12. In the face of aforesaid facts and circumstances, learned Trial Court did not commit any error in rejecting the application of the petitioner under Section 319 Cr.P.C., as evidence on record against respondent No.2-Baksho is not of the standard of more than *prima facie* case, so as to warrant her summoning under Section 319 Cr.P.C.

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Consequently, finding no merit in this revision petition, the same is hereby dismissed.

February 15, 2023
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(DEEPAK GUPTA)
JUDGE

Whether reasoned/speaking:	Yes/No
Whether reportable:	Yes/No