

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARHCRR No.853 of 2022
Pronounced on: May 12.05.2023.

Chanderbhan and others

....Petitioners

Versus

State of Haryana and another

..... Respondent

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWALPresent: Mr. Devinder Singh, Advocate
for the petitioners.

Mr. Surender Singh, A.A.G., Haryana.

Mr. R.S. Mamli, Advocate
for respondent No.2/complainant.

VIKRAM AGGARWAL, J.

1. The present revision petition assails the order dated 05.04.2022 passed by the Sessions Judge, Fatehabad, vide which the application filed by respondent No.2/complainant through the public prosecutor under Section 319 of the Code of Criminal Procedure (for short 'the Cr.P.C.'), seeking to summon the present petitioners as additional accused was allowed.

2. On the statement of respondent No.2/complainant, FIR No.160 dated 21.05.2020, under Section 306 of the Indian Penal Code, 1860 (for short 'the IPC'), was registered at Police Station Bhuna, District Fatehabad. Her son Bharat Singh was married to one Annu, daughter of petitioners No.1 and 2 and sister of petitioner No.3. There were two boys and one girl from the wedlock. Bharat Singh was working as a driver in Haryana Roadways. The allegations were that wife of Bharat Singh i.e., Annu was not having a good character. Many times, her son Bharat Singh tried to make her understand, but she did not mend her ways. When

said anything to their daughter, they would kill him. Bharat Singh committed suicide on 21.05.2020. After his death, a suicide note was also recovered, in which he had written that the wife of Bharat Singh, namely Annu was having relations with one Parveen who was working as a labourer in his house. Despite persuasion, she continued to establish physical relations with him. When he checked her, parents of Annu intimidated him and the present petitioners threatened to kill him and to get him sent behind the bars. It was stated in the suicide note that on account of this reason, he was committing suicide and that after his death, all accused should be punished.

3. During the course of investigation, the present petitioners were found to be innocent by the Investigating Agency and under the circumstances, challan (final report) was presented only against Annu and Parveen. When the trial commenced, respondent No.2/complainant appeared as PW-1 and again named the present petitioners. Thereafter, an application under Section 319 Cr.P.C., was filed seeking to summon the present petitioners as additional accused. This application was allowed by way of impugned order dated 05.04.2022, leading to the filing of the present revision petition.

4. I have heard learned counsel for the parties and have perused the paper-book.

5. Learned counsel for the petitioners has submitted that the impugned order is not sustainable. It has been submitted that the Investigating Agency had found the petitioners to be innocent and merely on the deposition of respondent No.2/complainant, who appeared as PW-1 and without there being any further evidence against the petitioners, they could not have been summoned as additional accused. It has been submitted that the ingredients of abetment are not made out even if all allegations levelled in the suicide note are accepted to be correct.

Learned counsel has submitted that the order is not sustainable and, therefore, deserves to be set aside. Learned counsel places reliance upon judgment of Hon'ble Supreme Court in ***Rajesh Vs. State of Haryana, Criminal Appeal No. 93 of 2019 (Arising out of SLP (Crl.) No. 8667 of 2016), decided on 18.01.2019*** and judgments of this High Court in ***Sita Ram Sharma and others Vs. State of U.T. Chandigarh and others, CRM-M-43463 of 2015, decided on 12.04.2019*** and ***Sheo Chand @ Chandi Ram Vs. State of Haryana, CRM-M-27279 of 2018, decided on 17.10.2018.***

6. On the other hand learned counsel representing respondent No.2/complainant has submitted that the impugned order does not call for any interference as the same has been passed in accordance with law. Learned counsel has submitted that the petitioners were duly named in the suicide note and it had clearly been mentioned that the deceased-Bharat Singh had been harassed and threatened even by the present petitioners on account of which he was committing suicide. Learned counsel has submitted that whether an offence under Section 306 IPC would be made out or not would be determined at the stage of trial and the evidence led before the Court was sufficient to summon the present petitioners as additional accused. Learned counsel representing the State of Haryana has also submitted that the order does not call for any interference and has relied upon judgment of this Court in ***Sombir Vs. State of Haryana and another, CRR No. 3240 of 2019, decided on 12.04.2023.***

7. I have considered the submissions made by learned counsel for the parties.

8. Before advertng to the merits of the case, it would be essential to examine the law on the subject. In the case of ***Hardeep Singh Vs. State of Punjab and others 2014 (3) SCC 92***, a Constitution Bench of the Hon'ble Supreme Court

of India examined various questions with regard to Section 319 Cr.P.C. In the said case, a reference had been made to the Hon'ble Constitution Bench on account of different views having been expressed by the Hon'ble Apex Court and several High Courts on the scope and extent of the powers of the Courts under the criminal justice system to arraign any person as an accused during the course of inquiry or trial as contemplated under Section 319 Cr.P.C. After examining the matter threadbare, the Hon'ble Apex Court answered all the questions framed for consideration. Para 99 of the judgment answers question No. (iv), which was regarding the degree of satisfaction required for invoking the power under Section 319 Cr.P.C. The Hon'ble Supreme Court of India held as under:-

“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 guilty of the accused.”

9. The position of law which emerges, therefore, is that for summoning anyone as an additional accused, much stronger evidence is required than mere probability of his complicity. It also emerges that 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.

10. The order under challenge shall have to be tested on the touchstone of the principles laid down by the Hon'ble Apex Court in ***Hardeep Singh's*** case (supra). The respondent No.2/complainant had duly named the petitioners in the FIR as also in her statement in Court. The suicide note duly contained allegations against the present petitioners. The Investigating Agency found that the present petitioners had no role to play. However, no specific reason was given for this finding having been arrived at as would be clear from the reply filed by the State of Haryana. Whether the deceased had been harassed by the present petitioner or not would be known by the deceased only, who unfortunately committed suicide. While committing suicide, he is alleged to have executed a suicide note, which also levels specific allegations against the present petitioners. Whether these allegations would be sufficient to lead to conviction of the petitioners or not is not to be considered at this stage. The evidence at this stage is more than a *prima facie* case and is not mere probability of the complicity of the present petitioners. The complainant also reiterated the allegations when she stepped into the witness box as PW-1. No other evidence which can be termed to be more strong would be available at a later stage in the trial, because the case hinges upon the suicide note even more than on the statement of the complainant. Of course, if this suicide note is not found to be in the hand-writing of the deceased, it would be a different case altogether. However, no such thing has been brought on record and what has been brought on record is that the final report under Section 173 Cr.P.C., has been submitted.

11. I have gone through the judgments relied upon by learned counsel for the petitioners. In the case of ***Rajesh Vs. State of Haryana*** (supra) the Hon'ble

Supreme Court of India was dealing with an appeal arising out of conviction of the appellant therein under Section 306 IPC. The findings recorded in the said judgment would not help the petitioners at this stage as the trial is yet to begin in the present case and only an application under Section 319 Cr.P.C. has been allowed. At this stage, it is not to be decided as to whether the petitioners can be convicted or not. The other two judgments were given by Co-ordinate Bench of this Court in the particular facts of those cases and would also, therefore, not help the petitioners. There is no quarrel with the proposition that while exercising powers under Section 319 Cr.P.C. the Court is to broadly understand the evidence at that stage and not to take it literally. However, in those cases the Co-ordinate Benches had found that no material had been brought on record against the petitioner therein. Even otherwise, it has to be borne in mind that in criminal cases, there can be no straight jacket formula and each case has to be decided on its own facts.

12. Under the circumstances, I do not find any illegality in the order passed by the Sessions Judge, Fatehabad, vide which the application filed under Section 319 Cr.P.C., was allowed and the present petitioners were summoned as additional accused.

In view of the aforementioned facts and circumstances, the present revision petition is dismissed, the same being devoid of merit.

(VIKRAM AGGARWAL)
JUDGE

Pronounced on 12.05.2023
Rekha

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