

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

CRR-993-2023

Date of Decision: April 19, 2023

MONU RAWAL AND ANR

..... Petitioners

Versus

STATE OF HARYANA AND ANOTHER

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Ms. Hanima Grewal, Advocate for petitioners.
Mr. Sumit Jain, Addl. A.G., Haryana.

HARKESH MANUJA, J. (ORAL)

1. By way of present petition, challenge has been made to the order dated 03.04.2023 passed by Court of Addl. Sessions Judge, Panipat whereby an application filed under Section 319 CrPC for the purpose of summoning petitioners as additional accused has been allowed.

2. Fact of the case are that FIR No.350 dated 25.06.2016 under Sections 306 and 34 IPC was registered at P.S. Samalkha, District Panipat, Haryana against petitioners as well as Bishamber and one Suresh. The FIR was registered on a complaint submitted by Parveen i.e. the brother of the deceased.

3. Upon investigation, the final report was filed indicting Bishamber and Suresh whereas the petitioners were placed in column No.2. During trial, the complainant was examined as PW3. Based on his statement wherein he tried to implicate the petitioners as well as one

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Sonu, an application under Section 319 of CrPC was filed for summoning them as additional accused. The said application was partly allowed vide order dated 20.07.2017, summoning petitioner No.2 as an additional accused whereas the prayer qua Sonu and Monu was declined.

4. Aggrieved thereof, two separate revision petitions were filed i.e. CRR-3969-2017 (O&M) titled as “**Parveen Vs. State of Haryana and Ors.**” and CRR-2841-2017(O&M) titled as “**Soni Vs. State of Haryana and Anr.**”. The aforesaid two revision petitions were allowed by this court vide judgment dated 27.03.2018 by setting aside the order dated 20.07.2017 and remanding back the matter to the trial Court for its fresh adjudication.

5. Thereafter, the trial Court vide order dated 25.09.2018 dismissed the application filed at the instance of prosecution which was impugned before this Court by way of **CRR-3963-2018** titled as “**Parveen Vs. State of Punjab and Ors.**” and was disposed of vide order dated 06.02.2023 with the following observations:-

“In view of the discussion made hereinabove, the impugned order dated 25.09.2018 passed by the trial Court is hereby set aside and the matter is remanded back to the trial Court for deciding it afresh by taking into consideration the entire evidence available on record including Ex. P-8, the statement made by PW-3 as well as the report dated 22.03.2018 submitted by the FSL.

Considering the fact that trial in the present case is pending for the last more than 6 years now, trial Court is requested to dispose of the application filed under Section 319 CrPC, preferably within a period of 2 months, qua respondents No.2 & 4 only.

Disposed of accordingly.”

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6. In pursuance thereof, the trial Court vide order dated 03.04.2023 partly allowed the application while summoning the petitioners as additional accused which has now been impugned by way of present revision petition.

7. Learned counsel for the petitioners vehemently submits that the impugned order has been passed merely on the basis of averments made in the FIR as well as the suicide note which already stood considered by the investigating agency at the time of preparation of final report while placing the petitioners in column No.2. She further submits that there was no new evidence brought on record to indict the petitioners, as PW3 the complainant merely reiterated the facts stated by him in the FIR. She also points out that even in the suicide note, neither any date was mentioned nor there was any specific and categorical allegation made against petitioner No.2 who was living separately from her husband for the past more than eight months.

8. Relying upon decision made by the Hon'ble Supreme Court in case of **"Sanju@ Sanjay Singh Sengar Vs. State of Madhya Pradesh 2002(2) R.C.R. (Criminal) 687 and Juhru and Ors. Vs. Karim and Another 2023 S.C.C. Online SC 171"**, learned counsel for the petitioner submits that the power under Section 319 of CrPC for purpose of summoning an individual as additional accused has to be exercised sparingly and only in case of existence of more than prima facie case. She refers to paragraph 13 and 17 of the aforesaid two judgments respectively, which are reproduced hereunder for

reference:-

“Sanju@ Sanjay Singh Sengar Vs. State of Madhya Pradesh”

“13. Reverting to the facts of the case, both the courts below have erroneously accepted the prosecution story that the suicide by the deceased is the direct result of the quarrel that had taken place on 25th July 1998 wherein it is alleged that the appellant had used abusive language and had reportedly told the deceased ‘to go and die’. For this, the courts relied on a statement of Shashi Bhushan, brother of the deceased, made under section 161 CrPC, 1973 when reportedly the deceased, after coming back from the house of the appellant, told him that the appellant had humiliated him and abused him with filthy words. The statement of Shashi Bhusha, recorded under Section 161 CrPC, 1973 is annexed as annexure P-3 to this appeal and going through the statement, we find that he has not stated that the deceased had told him that the appellant had asked him ‘to go and die’. Even if we accept the prosecution story that the appellant did tell the deceased ‘to and die’, that itself does not constitute the ingredient of instigation. The word ‘instigate’ denotes incitement or urging not to do some drastic or unadvisable action or to stimulate or incite. Presence of mens rea, therefore, is the necessary concomitant of instigation. It is common knowledge that the words uttered in a quarrel or in a spur of the moment cannot be taken to be uttered with mens rea. It is in a fit of anger and emotion. Secondly, the alleged abusive words, said to have been told to the deceased were on 25th July, 1998 ensued by quarrel. The deceased was found hanging on 27th July, 1998. Assuming that the deceased had taken the abusive language seriously, he had enough time in between to think over and reflect and therefore, it cannot be said that the abusive language, which had been used by the appellant on 25th July, 1998 derived the deceased to commit suicide. Suicide by the deceased on 27th July, 1998 is not proximate to the abusive language uttered by the appellant on 25th July, 1998. The fact that the deceased committed suicide on 27th July, 1998 would itself clearly point out that it is not the direct result of the quarrel taken place on 25th July, 1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die. This fact had escaped notice of the Courts below.”

“Juhru and Ors. Vs. Karim and Another”

17. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 CrPC is not to be exercised routinely and the existence of more than a prima facie case is sine quo 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 CrPC, 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 CrPC ought not to be invoked.”

9. I have heard learned counsel for petitioners and have perused the paper-book. I am unable to find substance in the submissions made on behalf of petitioners.

10. The crucial test to be applied for the purpose of summoning an individual as an additional accused invoking powers under Section 319 Cr.P.C. 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 and thus, while considering the application under Section 319 Cr.P.C. the Court cannot insist upon proof with mathematical certainty.

11. In the present case, the trial Court while passing the impugned order, summoning the petitioner as additional accused, relied upon the suicide note of the deceased Vikram (Ex.P8), besides the

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report dated 22.03.2018 (Ex.P6) submitted by FSL, corroborated by the statement made by the complainant before the learned trial Court reiterating his version which gains relevance in view of the law laid down by the Hon'ble Supreme Court in case of "**Sartaj Singh Vs. State of Haryana and Anr. 2021(2) R.C.R. (Criminal) 527**". Relevant portion of Para 7 of the aforesaid judgment is reproduced hereunder for reference:-

"7In any case, in the examination in chief of the appellant injured eye witness, the names of the private respondents herein are disclosed. It might be that whatever is stated in the examination in chief is the same which was stated in the FIR. The same is bound to be there and ultimately the appellant herein – injured eye witness is the first informant and he is bound to again state what was stated in the FIR, otherwise he would be accused of contradictions in the FIR and the statement before the Court. Therefore, as such, the learned Trial Court was justified in directing to issue summons against the private respondents herein to face the trial."

12. In the facts and circumstances of the present case, the credible evidence relied upon and discussed by the Court below, sufficiently crosses the pivotal test as required under Section 319 Cr.P.C. The judgment of Hon'ble Supreme Court in **Juhru's** case (supra) cited at Bar, may not apply to the facts and circumstances of the present case as in the said case prayer for summoning an additional accused was declined on account of absence of enough evidence for the said purpose.

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13. In view of the discussion made hereinabove, finding no illegality or perversity in the order dated 03.04.2023 passed by the Court of Additional Sessions Judge, Panipat, the present revision petition is dismissed.

14. It is, however, made clear that any observation made by this court shall not be treated as expression of opinion on merits of the present case.

19.04.2023
tejwinder

(**HARKESH MANUJA**)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>