

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

CRR-1017-2019

Reserved on:-12.01.2023

Date of Pronouncement:- 17.01.2023

Narendra Kumar

...Petitioner

vs.

State of Haryana and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sajjan Singh, Advocate for the petitioner
Mr. Vijesh Sharma, Addl. A.G. Haryana.
None for respondent No 2.

HARKESH MANUJA, J.

By way of present revision petition, petitioner has impugned the order dated 09.04.2019 whereby he has been ordered to be summoned under Section 319 Cr.P.C. and to face trial in FIR No.430 dated 07.07.2017 under Section 302, 323, 324 and 325 IPC, registered at Police Station City Rohtak..

The above mentioned FIR was filed by one Nitin against accused Devender for causing the death of his mother Sheela when she tried to intervene in a dispute between Devender and his wife Sunita. In investigation report filed u/s 173 of CR.P.C., name of the present petitioner was placed in column 2. However, he was summoned as additional accused on an application moved by the prosecution u/s 319 of CR.P.C., on the basis of statement given by Smt. Sunita as PW-7, in which she attributed specific role to the present petitioner, relevant extract of which is as below:-

".....On the same day, at about 8.00 p.m. my husband and my brother in law Narender came back to the house and started quarelling with me. When I made them to understand, my brother-in-law Narender gave a brick blow on my head. I called my brother Pawan.

After coming to my house, my brother got applied bandage from some private doctor on my head. After making understand Devender and Narender, my brother left our house. Till late night, accused Devender and my brother-in-law Narender abused me under the effect of alcohol. At about 11.00 p.m. when I asked them to go to sleep, my husband gave farsa blows on my head and both the hands. When I raised noise, then my daughter Tanisha came up stairs, then accused Devender also gave farsa blow on the neck of Tanisha. Thereafter we both i.e. myself and my daughter raised noise, Sheela wife of Raghbir who is my neighbour, came to our house, then Devender rushed towards her along with Farsa. When she tried to run away outside under the fear, Narender caught hold of her and slapped her. Thereafter my husband gave farsa blows on the neck of Sheela. Thereafter both my husband and Narender fled away from the spot along with farsa, after sitting on a motor cycle. Thereafter, I became unconscious.....”

Learned counsel for the petitioner contends that the FIR in question was lodged at the instance of Nitin, who is the son of the deceased Smt. Sheela, as per whom Devinder, the sole accused who was named therein, gave a 'pharsa' blow to the deceased. He further submits that Petitioner was not named by the first informant Nitin even in his statement to the police recorded on the same day and while appearing as PW-5 before the Court as well and even Tanisha, who also received injuries in the occurrence did not name the petitioner in her statement to the police. He also contends that the petitioner was named for the first time by Sunita (PW-7) before the Police as well as in her statement before the Court on account of personal enmity with him being his sister-in-law, having a dispute with regard to property between them, whereas Sunita (PW-7) was not in any manner related

to the deceased and as such her statement being motivated and unreliable was not sufficient for summoning the petitioner as an additional accused..

On the other hand, learned State Counsel submits that in view of the categorical statement of Smt Sunita as PW-7, who also happens to be an injured eye-witness of the incident, attributing specific role to the petitioner, learned Trial Court rightly exercised its powers u/s 319 of the Cr.P.C., while summoning the petitioner as an additional accused to face the trial.

I have heard learned counsel for the parties and gone through the paper book. In “**Hardeep Singh vs. State of Punjab**” reported as (2014) 3 SCC 92, it has been settled by the Hon’ble Supreme Court that while summoning a person as an additional accused, though the degree of satisfaction is a little more, but still the standard applicable is “prima facie” satisfaction only, on the basis of some evidence as stipulated in section 319 of Cr.P.C.. Though, it is correct that petitioner was not named in the FIR, however, he has been specifically named in her statement by Sunita before Police as well as before the Trial Court while appearing as PW-7, on whose exhortation, deceased Sheela got involved in the unfortunate incident and lost her life. In view of **Hardeep Singh’s** case (supra), examination-in-chief of PW-7 (Sunita) before the Trial Court, even without cross-examination is an evidence and her statement, being an eye-witness account, has to be accorded due weightage and has equal importance, if not more than the statement of first informant/ Nitin (PW-5) on whose statement FIR was registered. Considering the statement of PW-7 (Sunita), it can be prima facie recorded that the petitioner appears to have committed

the offence, without holding him guilty of having committed the same, at this stage which shall only be ascertained during trial and thus the circumstances justify that the petitioner maybe tried as an additional accused. In this context , reliance may be placed on "**Rajendra Singh vs State of U.P. & Anr.**" reported as 2007(3) RCR 1022, para 15 of which is reproduced below:-

"15. Section 319 (1), which is relevant for our purpose reads :

"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."

As I see it, the words are plain and the meaning clear. When in the course of the enquiry or trial, it appears to the court from the evidence that a person, not arrayed as an accused, appears to have committed any offence for which that person could be tried together with the accused, the court may proceed against that person. Surely, it must appear to the Court from the evidence that someone not arrayed as an accused, appears to have committed an offence. Be it noted, the Court need not be satisfied that he has committed an offence. It need only appear to it that he has committed an offence. In other words, from the evidence it need only appear to it that someone else has committed an offence, to exercise jurisdiction under Section 319 of the Code. Even then, it has a discretion not to proceed, since the expression used is 'may' and not 'shall'. The legislature apparently wanted to leave that discretion to the trial court so as to enable it to exercise its jurisdiction under this section. The

expression 'appears' indicates an application of mind by the court to the evidence that has come before it and then taking a decision to proceed under Section 319 of the Code or not. With great respect, I see no reason to describe the power as an extraordinary power or to confine the exercise of it only if compelling reasons exist for taking cognizance against any other person against whom action has not been taken. After all, the section only gives power to the court to ensure that all those apparently involved in the commission of an offence are tried together and none left out. I see no reason to curtail this power of the court to do justice to the victim and to the society. It appears to me that it is left to the judicial discretion of the court, judicially trained, to decide to proceed or not to proceed against a person in terms of Section 319 of the Code."

Thus, it may only be during trial that the prosecution would prove its case beyond reasonable doubt, specifically in the spectrum of circumstances presented by learned counsel for the petitioner attributing personal motive to PW-7 (Sunita) against him, being his sister-in-law, requiring the same to face the scrutiny of trial with no premature interference being warranted at this early stage.

In view of the discussion held above, present revision petition is dismissed warranting no interference with the order passed by the learned Court below in exercise of its powers under Section 319 of the Code of Criminal Procedure.

17.01.2023
anil

(HARKESH MANUJA)
JUDGE

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