

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

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2023:PHHC:126594

Criminal Revision No.3188 of 2018 (O&M)

Date of decision: September 22nd, 2023

Rajiv Goyal

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Ginnijeet Malhotra, Advocate
for the petitioner.

Mr. Pankaj Khullar, Assistant Advocate General, Punjab.

Mr. P.S. Hundal, Advocate
for respondent No.2.

MANJARI NEHRU KAUL, J.

The petitioner/complainant is impugning the order dated 04.07.2018, whereby an application filed by the petitioner for summoning Rajat Goyal son of Anil Goyal, as an additional accused under Section 319 Cr.P.C., in FIR No.15 dated 17.01.2017 under Sections 365, 302, 328, 201 and 34 of the IPC, was dismissed by the learned Additional Sessions Judge, Ludhiana.

2. As per allegations contained in the FIR, which was lodged by the petitioner, his brother Harsh Goyal (hereinafter referred to as 'deceased') left their shop on a motorcycle for Lal Palace, Jagraon, on 15.01.2017 at about 6:30 pm, to watch a movie. The deceased was carrying two mobile phones with him, having numbers 96036-5540 and 79861-20601. Since the deceased did not return home till 10:30 pm and his phones were also not reachable, the complainant became anxious and suspected that he might have been abducted by some unknown persons. Hence, he approached the police, who entered Rapat No.17, on

16.01.2017 for offence under Section 365 of the IPC. On 19.01.2017, the complainant recorded a supplementary statement under Section 161 Cr.P.C. to the effect that he had learnt that accused Geeta along with some unidentified persons had poisoned the deceased to death and thereafter, subsequently disposed of his body. During investigation, accused Geeta allegedly suffered a disclosure statement pursuant to which she got the dead body of the deceased recovered. During interrogation of accused Geeta, it came to the fore that her nephew Prince as well as Harinder @ Harry were also involved in the crime in question. Further investigation revealed that one more person namely Pavittar Singh, too had participated in the crime as he was the one, who had injected some intoxicant to the deceased, before the occurrence in question. Resultantly, Prince, Harinder @ Harry and Pavittar Singh @ Bittu were also nominated as accused for the murder of the deceased. Both accused Prince and Pavittar Singh allegedly suffered disclosure statements, pursuant to which the Identity Card and the Driving Licence of the deceased were recovered. Accused Harinder @ Harry absconded and proceedings under Section 82 Cr.P.C. were initiated against him. Accused Geeta, Pavittar Singh and Prince were challaned and sent up to face trial, however, since accused Prince was a juvenile, he was sent up to face trial before the Juvenile Justice Board.

3. Learned counsel has vehemently contended that during trial, it had surfaced that respondent No.2 was seen along with other co-accused just before the deceased went missing, hence, it clearly pointed to his participation in the crime in question. In support, learned counsel has referred to the deposition of PW-5 Nirmal Kumar, wherein he had deposed qua the role of respondent No.2. Still further, it has been

argued that during investigation, the mobile call details of the deceased as well as respondent No.2 were collected by the police, which showed their tower location to be the same and the last call made by the deceased was to none other than respondent No.2. However, the trial Court had failed to appreciate the evidence led and had erroneously passed by the impugned order, declining to summon respondent No.2. as an additional accused to face trial under Section 319 Cr.P.C. Hence, a prayer has been made to summon respondent No.2 under Section 319 Cr.P.C. to face trial along with the other accused, who are already facing trial for the murder of Harsh Goyal-deceased. Learned State counsel has supported the submissions made by the learned counsel for the petitioner and has prayed for allowing the instant petition.

4. *Per contra*, learned counsel for respondent No.2 has opposed the prayer and submissions made by the counsel opposite. He has asserted that respondent No.2 had neither been named in the FIR nor any suspicion much less by way of a whisper raised about his participation in the crime in question nor any cogent material had come to the fore during investigation qua he even being remotely linked with the murder of Harsh Goyal. Learned counsel for respondent No.2 has further asserted that PW-5 Nirmal Kumar while getting his statement recorded under Section 161 Cr.P.C. had not even obliquely referred to the presence of respondent No.2 along with the other co-accused and the deceased, and thus, it was evident that while stepping into the witness box PW-5 Nirmal Kumar had made material improvements which, without doubt, raised a big question mark about its authenticity. It has been further submitted that once the petitioner had not been named any time during investigation and even in the statement recorded

under Section 161 Cr.P.C. of PW-5 Nirmal Kumar, merely attributing a role to him while stepping into the witness box would be against the mandate of Section 319 Cr.P.C. and the parameters laid down by the Hon'ble Supreme Court in *Hardeep Singh Versus State of Punjab 2014 (3) SCC 92*. Furthermore, learned counsel has asserted that merely because the tower location of the mobile phones of the deceased and respondent No.2 were the same and the deceased had made the last call to respondent No.2, would not point to the latter's complicity in the crime in question because it was a matter of record that the house of respondent No.2 was located in the vicinity of the occurrence in question. Hence, it would have been most natural for the tower location of the deceased and respondent No.2 to be the same. It has also been contended that there was no material on record as to from which mobile phone number, respondent No.2 had made a call to the deceased. Learned counsel has thus, vehemently submitted that the impugned order did not warrant any interference as it was a well reasoned one and in consonance with the settled law.

5. I have heard the learned counsel for the parties and perused the relevant material on record.

6. The Hon'ble Supreme Court in Hardeep Singh's case (supra) has laid down the following parameters for summoning a person to face trial under Section 319 Cr.P.C.

98. 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.

*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 unrebutted, 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 guilt of the accused.*

Q.(v) In what situations can the power under this section be exercised: Not named in FIR; Named in the FIR but not charge-sheeted or has been discharged?"

7. Section 319 of the Cr.P.C. embodies the core principles of fairness, equity and accountability i.e. a person, who has committed a crime, faces the consequences of his action while the rights of an innocent person are safeguarded from unfair trial and unjust punishment.

8. Before proceeding, it would be thus, apposite to reproduce the provisions of Section 319 Cr.P.C.:-

"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) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(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.”

9. Hence, what flows from the provisions of Section 319 Cr.P.C. as well as the settled law is that there should be sufficient evidence brought forth during trial to establish a *prima facie* case against the person(s) to be summoned. Mere suspicion or conjectures of some person's involvement would not be sufficient to invoke the provisions of Section 319 Cr.P.C. to summon a person as an additional accused.

10. Respondent No.2, as not disputed by the learned counsel for the petitioner also, was not named in the FIR nor any material had come to light in any manner whatsoever, much less by way of whisper, during investigation qua his involvement in the crime in question. A

perusal of the statement of PW-5 Nirmal Kumar, which was recorded by the police under Section 161 Cr.P.C. on 22.01.2017 reveals that he has given the minutest of details qua all the co-accused, who already stand challaned in the crime in question, however, there is no mention with respect to the presence of respondent No.2 or his participation in any manner in the crime in question.

11. Hence, in the light of the facts and circumstances of the case, I do not find any infirmity much less illegality in the impugned order.

12. The instant revision petition, therefore, stands dismissed.

13. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

14. In the light of the dismissal of the revision petition, application for stay i.e. CRM No.33717 of 2018 stands disposed of.

September 22nd, 2023
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes