

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

(201)**CRR-3963-2018****Date of Decision: 06.02.2023**

Parveen

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Akshay Jindal, Advocate, for the petitioner.

Mr. Ramesh Kumar Ambavata, AAG., Haryana.

Mr. S. S. Ghangas, Advocate, for respondents No.2 to 4.

HARKESH MANUJA, J.(ORAL)

By way of present petition, challenge has been made to an order dated 25.09.2018 passed by the Court of learned Additional Sessions Judge, Panipat, whereby, an application invoking Section 319 Cr.P.C., filed at the instance of petitioner/complainant, seeking summoning of additional accuseds has been dismissed.

Brief facts of the case are that FIR No.350 dated 25.06.2016, alleging commission of offence under Sections 306 read with Section 34 IPC at Police Station, Samalkha, District Panipat, came to be registered against respondents No.2 to 4 besides one Bishamber and Smt. Suresho, at the instance of present petitioner, on account of alleged suicide committed by his brother namely Vikram. Final report was submitted by the investigating agency on 01.09.2016 against Bishamber and Suresho by placing the private respondents in Column No.2. The petitioner appeared as PW-3 during trial, before the trial Court on 19.01.2017, having deposed regarding the role/attribution of the private respondents moved an application under Section 319 Cr.P.C., for summoning

Court vide order dated 20.07.2017, ordering summoning of respondent No.2 as an additional accused, however rejecting the prayer qua respondents No.3 and 4.

The order dated 20.07.2017 came to be challenged before this Court by way of two separate criminal revisions i.e. CRR No.2841 of 2017 and CRR No.3969 of 2017, filed at the instance of respondent No.2 and the petitioner respectively. The aforesaid two criminal revisions were disposed of by this Court vide common order dated 27.03.2018 by setting aside the order dated 20.07.2017 passed by the trial Court with a direction to decide the application afresh after affording an opportunity of hearing to both sides. The operative portion of the judgment/order dated 27.03.2018 passed by this Court is reproduced hereunder:

*“After hearing counsel for the parties, I find that the trial Court while passing the impugned order dated 20.07.2017, has not looked into all the aspects raised by the learned counsel for the parties. The trial Court has also not assessed the quality of evidence in the light of judgment of Hon'ble the Supreme Court in **Hardeep Singh's case** (Supra) and has not assigned any reason to disbelieve the report submitted under Section 173 Cr.P.C., therefore, the impugned order dated 20.07.2017 is set aside and the matter is remanded back to the trial Court to decide the application afresh after affording an opportunity of hearing to both the parties.*

The parties are directed to appear before the trial Court on 27.04.2018.

Disposed of.”

In pursuance thereof, the trial Court decided the matter afresh vide order dated 25.09.2018 thereby, rejecting the prayer made by the petitioner for summoning of respondents No.2 to 4 as additional accused. It

is the said order dated 25.09.2018 which has been challenged by way of present revision petition.

Learned counsel for the petitioner on instructions from the petitioner namely Parveen who is present in Court very fairly submits that the present petition qua respondent No.3 Sonu Son of Bishambar is not being pressed and the challenge to the impugned order thus be restricted qua respondents No.2 & 4 only.

Further, learned counsel for the petitioner submits that the trial Court while passing the impugned order failed to take into consideration the report dated 22.03.2018 submitted by the FSL as regards the suicide note Ex.P-8 which was scribed by the deceased. Learned counsel further submits that while ignoring the FSL report, the trial Court has gone on to adjudicate upon the evidentiary value of the suicide note Ex.P-8 whereas, while exercising powers under Section 319 Cr. P.C., the trial Court was required to make a *prima facie* opinion only regarding the credibility of the evidence which at this stage was to be evaluated on the threshold of something just more than required for the purpose of framing of charge and not for the purpose of conviction. In support, learned counsel for the petitioner relies upon judgment of this Court, passed in CRR-1754 of 2022, titled as “Sameer @ Sameer Dahiya Vs. State of Haryana and others, decided on 25.08.2022.

On the other hand, learned counsel for the private respondents, vehemently opposes the prayer made in this petition while submitting that the evidence of PW-3 Parveen which is the sole basis of filing of application under Section 319 Cr.P.C. is a mere reiteration of the statement made by him under Section 161 of Cr.P.C., before the investigating agency which already formed part of the final report prepared under Section 173 Cr.P.C., thus, on the basis of the said evidence, the trial Court rightly refused to exercise its jurisdiction under

I have heard learned counsel for the parties and gone through the paper book.

A perusal of the impugned order dated 25.09.2018 passed by the Court of learned Additional Sessions Judge, Panipat, shows that while exercising powers under Section 319 Cr.P.C., the Court travelled beyond its jurisdiction while directly commenting upon and adjudicating the evidentiary value of the merit of the suicide note Ex.P-8. In view of the language used under Section 319 Cr.P.C. wherein the legislature uses the words “it appears from the evidence”, at this state, the trial Court was merely required to form a *prima facie* opinion as to whether the private respondents appear to have committed the offence and not that they have actually committed the same, particularly, in the wake of specific deposition of PW-3 Parveen which actually got *prima facie* corroborated by the report dated 22.03.2018 submitted by the FSL as regards the suicide note Ex.P-8. The trial Court while passing the impugned order did not even notice or mention about the report dated 22.03.2018 while exercising its powers under Sections 319 Cr.P.C, meaning thereby that the said part of relevant scientific evidence was not even discussed or dealt with which thus, makes the impugned order being based upon incomplete appreciation of material evidence available on record and thus becomes unsustainable.

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 Cr.P.C., preferably within a period of 2 months, qua respondents No.2 & 4 only.

Disposed of accordingly.

(HARKESH MANUJA)
JUDGE

06.02.2023
anil

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