

IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH

112

CRR-1596-2023 (O&M)

Date of decision: 14.07.2023

VINOD KUMAR

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. VP Sangwan, Advocate
for the petitioner.

HARNARESH SINGH GILL, J. (ORAL)

Challenge is to the order dated 22.05.2023 passed by the learned Sessions Judge, Fatehabad, in the proceedings arising out of FIR No.567 dated 09.11.2021, under Sections 120-B, 302/34 IPC, Police Station City Fatehabad, District Fatehabad, vide which an application under Section 319 Cr.P.C. filed by the petitioner for summoning respondents No.2 and 3, namely, Khali and Mahender (as additional accused), was dismissed.

Learned counsel for the petitioner submits that the petitioner, while appearing as PW-1 before the Court below on 06.12.2022 (Annexure P-2), specifically stated that on 09.11.2021, Mahender-respondent No.3 had visited his house at about 5:00-5:30 p.m. and took his brother, namely, Sukhdev (since deceased) on the pretext of roaming; that after 20 minutes, respondent No.3 took Sukhdev to Kanhaiya Diary on his bike at Bhatu Kalan road and purchased milk and curd, which was

handed over to Sukhdev; that, thereafter, the petitioner received information about the unfortunate incident and he reached at the spot; that on reaching the spot, the petitioner came to know that Sukhdev was shifted to General Hospital, Fatehabad and that on reaching the said Hospital, the petitioner came to know that Sukhdev had already expired. He further submits that the petitioner enquired about the matter from the nearby place and saw the CCTV footage of Kanhaiya Diary, from where respondent No.3 had purchased the milk and curd and handed over the same to Sukhdev; that, though on 30.12.2021, the said CCTV footage was supplied to the Police concerned, yet no action has been taken by them; that since the day of the occurrence, respondents No.2 and 3 were absconding and that, thereafter, the application under Section 319 Cr.P.C. was moved by the prosecution, which has arbitrarily been dismissed by the trial Court below. Still further, it is submitted that respondent No.3 was the last seen person with Sukhdev and thus, he is liable to be prosecuted, as per law.

I have heard the learned counsel for the petitioner and have carefully gone through the testimony (Annexure P-2) of the petitioner, while appearing as PW-1 before the trial Court.

The occurrence took place on 09.11.2021. The petitioner is the real brother of Sukhdev (deceased), whose statement was recorded before the Court below on 06.12.2022 and on the said date, respondents No.2 and 3 had been named as additional accused. There is no dispute that respondent No.3 was the person, who was last seen with the deceased, but the said fact alone is not enough to establish his guilty and

prove his involvement in the crime.

Though, the petitioner had moved an application dated 30.12.2021 before the Superintendent of Police, Fatehabad accompanied with the alleged CCTV footage, yet during investigation, the allegations against accused, namely, Anoop @ Mani, Lalit @ Sheru Pandit and Inderpal @ Kali, were found to be true; during the said investigation no incriminating material was found against respondents No.2 and 3 and accordingly, challan under Section 173 Cr.P.C. was filed before the Court concerned.

The learned Sessions Judge in the impugned order has rightly observed that the Court cannot bring on record any new documents on file, at any stage, as there are separate provisions under law, which deal with the circumstances under which additional documents can be placed on record and that no certificate under Section 65-B of Evidence Act was appended with the video CD.

The allegations against respondents No.2 and 3 do not seem to satisfy the satisfaction that is required for summoning an accused under Section 319 Cr.P.C. The standard of proof for summoning a person as an accused person under Section 319 Cr.P.C. must be higher than the one employed for framing the charge against the accused. While dealing with the aforesaid aspect of the matter, the Hon'ble Apex Court in Shiv Prakash Mishra vs State of Uttar Pradesh and another, 2019 (5) R.C.R. (Criminal) 946, has held as under:-

9. *“The standard of proof employed for summoning a person as an accused person under Section 319 Cr.P.C., 1973 is higher than the standard of proof employed for*

framing a charge against the accused person. The power under Section 319 Cr.P.C., 1973 should be exercised sparingly. As held in Kailash v. State of Rajasthan and another 2008(2) RCR (Criminal) 200: (2008) 14 SCC 51, the power of summoning an additional accused under Section 319 Cr.P.C., 1973 should be exercised sparingly. The key words in Section are it appears from the evidence..... any person..... has committed in offence. It is not, therefore, that merely because some witnesses have mentioned the name of such person or that there is some material against that person, the discretion under Section 319 Cr.P.C., 1973 would be used by the Court.”

In view of the above, no ground is made out to interfere with the well reason order dated 22.05.2023 passed by the learned Sessions Judge, Fatehabad.

Dismissed.

(HARNARESH SINGH GILL)
JUDGE

14.07.2023

Aman Jain

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No