

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

CRR-1802-2022

Date of decision : 22.02.2023

Manju

....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. G.S. Sandhu, Advocate
for the petitioner.

Mr. Rahul Mohan, D.A.G., Haryana.

Mr. Pratham Sethi, Advocate
for respondent No.2 to 13.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner/complainant (hereinafter referred to as Complainant) is impugning order dated 11.05.2022 passed by learned Additional Session Judge, Hisar vide which it dismissed her application filed under Section 319 Cr.P.C. for summoning the private respondents to face trial as additional accused in case FIR No.526 dated 27.10.2019 under Sections 306, 195-A of IPC and Section 3 (2)(V) & 3(1)(s) of SC & ST Act, registered at Police Station HTM, Hisar.

Learned counsel for the complainant inter alia contends that though in the FIR in question it was specifically alleged that Joginder @ Maman, Prem, Phool Singh and 3-4 unknown persons had abetted the

suicide of her brother, however, only accused, Joginder @ Maman, was challaned by the Police and the remaining accused i.e. private respondents were found innocent and placed in Column No.2. Furthermore, while stepping into the witness box as PW-2, the complainant again specifically named all the accused including the private respondents and also spelt out the roles played by them in the crime in question, however, the Court below gravely erred in ignoring her deposition and also the suicide note left behind by the deceased wherein he had stated that all the accused had been committing wrong acts with him, blackmailing him and thus, instigating him to end his life. Learned counsel also submitted that as per the FSL report, the suicide note was in the hand writing of the deceased.

Learned counsel in support of his submissions drew the attention of this Court to the FIR, Suicide note, FSL report and deposition of the of the complainant as PW-1 annexed as Annexures P-1, P-2, P-3 & P-4 respectively.

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

On a perusal of the material on record and the impugned order dated 11.05.2022, this Court has no hesitation in observing that the approach of the learned trial Court in declining the prayer of the petitioner-complainant to summon the private respondents as additional accused, does not suffer from any infirmity whatsoever. It needs to be reiterated that the power vested in a Court under Section 319 Cr.P.C. being discretionary should be used sparingly and has to be exercised cautiously, primarily to advance the cause of justice.

The Hon'ble Supreme Court in '**Hardeep Singh Vs. State of Punjab and others, 2014 (1) RCR (Criminal), 623**', has held as under while discussing the scope of Section 379 Cr.P.C:-

'A person can be summoned to face trial as an additional accused under Section 319 Cr.P.C. only if some strong and cogent evidence comes to the fore against such person from the evidence led before the Court. Further, the power under Section 319 Cr.P.C. being discretionary and extra ordinary power, it has to be exercised sparingly and not in a casual manner'.

Adverting to the case in hand, as per the allegations levelled in the FIR in question, a year prior to the suicide by Harinder (since deceased), accused Joginder @ Maman, had established unnatural relations with him and also threatened him with dire consequences as a result of which, a criminal case was registered against him at the instance of the deceased. In December, 2018, Zorawar, uncle of accused Joginder @ Maman, had beaten up the younger brother of the complainant, for which an FIR was registered but was subsequently cancelled by the Police. On account of the unnatural relations established with the deceased, he had been mentally disturbed ever since then. On 26.10.2019, when the complainant was visiting her village Saharwa, she received a telephonic call at about 10:00 p.m. from her landlord in whose house she and her deceased brother were residing informing her about the suicide committed by her brother.

In the police proceedings which were carried out in the presence of the family members of the deceased, no document much less any suicide note (Ex. P-5) was recovered or handed over to the police. It

was after two days, a suicide note was found by the complainant which was then handed over to the Police.

Furthermore in the FIR, only Joginder @ Maman had allegedly established unnatural relations with the deceased, one year prior to the occurrence in question, and had also threatened to kill him. Admittedly a criminal case also stood registered against Joginder @ Maman by the deceased. When the complainant appeared as PW-2 before the trial Court, she named a large number of people and alleged that they had committed unnatural offence with her deceased brother and also abused him in the name of his caste besides threatening to parade his sister i.e. the petitioner, naked. However, on a perusal of the allegations levelled by the complainant in the FIR and her as PW-2 before the trial Court, it is discernible that blatant material improvements have been made by the complainant. Furthermore, in the alleged suicide note there are cuttings and scratches all over. No doubt, names of the private respondents do find mention therein but there are no specific allegations against any of them of having committed unnatural offence with the deceased. Very strangely, in the suicide note, it is stated that the private respondents had been harassing the deceased for three years whereas in the FIR in question, the complainant had alleged that only accused Joginder @ Maman had committed unnatural offence with the deceased about a year prior thereto. In the suicide note, there is no mention much less by way of a whisper against accused Joginder @ Maman who was named at the first instance by the complainant.

In the present case, there is no sufficient material to summon the respondent as additional accused under Section 319 Cr.P.C. to face trial. Accordingly, the instant petition being devoid of any merit is dismissed.

22.02.2023
ps-I

(MANJARI NEHRU KAUL)
JUDGE

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