

110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1844-2023
Date of Decision:17.08.2023

Nanho Devi

...Petitioner

Vs.

State of Haryana and Others

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present: Mr. J.S Dadwal, Advocate
for the petitioner.

Mr. Rajinder Kumar Banku, Deputy Advocate General, Haryana.

N.S.Shekhawat J.

1. The petitioner has filed the present revision petition against the impugned order dated 10.05.2023, passed by the Court of Additional Sessions Judge, Rohtak, whereby the application under Section 319 Cr.P.C filed by the present petitioner/complainant was ordered to be dismissed.

2. The FIR in the present case was registered on the basis of the statement made by Nanho Devi, the present petitioner, who alleged that in the morning on 29.05.2020, her nephew Sunil son of Dharam called her on phone and informed that her brother Mukesh had died. On getting the information, she along with her husband Mukesh Kumar went to her parental home and after she reached there, other relatives also came and in the afternoon, her brother Mukesh was cremated. She, her family members and her sisters stayed in their parental home and she came to know about certain incidents, which had happened prior to death of her brother. After 13 days of death (last rites), she went to the house of Gautam son of Maman and enquired about the death of her brother from him. Gautam informed her that an altercation had taken place

between Uday and Mukesh, (deceased), few days ago over bundles of vegetables. At about 11:30 P.M, on 28.05.2020, her brother Mukesh drove his vehicle Pick Up to shop No. 50, New Vegetable Market, Rohtak and a fight had taken place between Uday and Mukesh, (deceased), which is owned by Narender Kumar @ Nanhe, commission agent. Uday son of Ganga Ram, Dharampal son of Sultan, Hari Ram, Chhotu and servant of shop No.51 were also present there and two other persons of Village Chang, District Bhiwani had also come there and during the fight, Mukesh had died. She talked to Narender Kumar @ Nanhe commission agent, but he did not disclose the facts to her and on her repeated requests, she was shown a part of the CCTV camera footage and when she saw the same with great difficulty, it was clearly shown that Uday was assaulting her brother and Dharampal son of Sultan, Gautam son of Maman, servants Hari Ram and Chotu, Narender Commission Agent, servant of shop No.51 and two other persons from Village Chang were also there. After seeing the video, the complainant told her sister-in-law (Bhabhi) Baby @ Indu Bala and Rinku, nephew to lodge a complaint with the police, but they flatly refused. Mukesh, brother of the complainant was living separately from his wife and children for the last three years and used to live with his mother and was not on talking terms with his wife and children. But after the death of her brother, dead body was taken away by Baby @ Indu Bala wife of Mukesh, since deceased to her home in the vehicle arranged by Gautam and Uday. Uday, Dharampal, Gautam, Rajesh @ Popa and Bittu were frequent visitors to the house of her sister-in-law, Baby @ Indu Bala and the family had the suspicion that abovenamed persons had hatched a criminal conspiracy to murder her brother in collusion with each other, due to greed of property and money. Baby

@ Indu Bala and Rinku, her nephew were also involved in the present case.

3. The FIR in the present case was got registered by the petitioner/complainant on 15.06.2020 with regard to the abovereferred alleged incident dated 29.05.2020.

4. Learned counsel for the petitioner contends that after completion of the investigation, the police had only presented the challan against Uday, Dharampal, Gautam and the respondents No. 2 to 8 were kept in column No.2. He further contends that the respondents No.2 to 8 were wrongly declared to be innocent, without any basis. Learned counsel further contends that the petitioner had appeared as PW-1 before the Trial Court and had specifically named respondents No.2 to 8 and there was sufficient incriminating evidence against the private respondents as well.

5. I have heard learned counsel for the petitioner and perused the record.

6. In the present case, it is evident that the petitioner received a phone call from Sunil, her nephew in the morning on 29.05.2020 and after she reached her parental home, the dead body of her brother was cremated in her presence and in the presence of other family members. After 13 days, she enquired from Uday, co-accused and the Dharampal, accused with regard to the incident and they misled her. However, on her insistence, they had shown her the CCTV footage, in which Uday was giving beatings to Mukesh, since deceased and other persons were allegedly present at the spot. However, the FIR was got registered by the complainant on 15.06.2020, after the delay of about 18 days. Apart from that, even though the petitioner had named respondents No.2 to 8, but there was no attribution at all to all of them. Apart from that, when the

police investigated the matter it was found that the respondents No.2 to 8 had no concern with the alleged crime and were found to be innocent during the course of investigation.

7. Apart from that, the FIR in the present case was registered on the basis of the statement/complaint Ex.P-1 and while appearing in the witness box as PW-1, the present petitioner had only repeated the contents of the complaint Ex.P-1, which were not found to be truthful. Except the self-serving statement of Pw-1 Nanho Devi, there was no other evidence on record to summon the respondents No.2 to 8.

8. The Hon'ble Supreme Court has held in the matter of **Guriya @ Tabassum Tauquir and Ors. Vs. State of Bihar 2007(4) RCR (Criminal) 497:2008 AIR(Supreme Court) 95 as follows:-**

*“13. On a careful reading of Section 319 of the Code as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceeding on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the F.I.R. as an accused, but not charge sheeted, can also be added to face the trial. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge sheet or the case diary, because such materials contained in the charge sheet or the case diary do not constitute evidence. of course, as evident from the decision reported in **Sohan Lal and others v. State of Rajasthan, 1990(3) RCR (Criminal) 610** the position of an accused who has been discharged stands on a different footing.”*

*“14. Power under Section 319 of the Code can be exercised by the Court suo motu or on an application by someone including accused already before it, if it is satisfied that any person other than accused has committed an offence and he is to be tried together with the accused. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates evidence of witnesses given in Court. Under Sub-section (4)(1)(b) of the aforesaid provision, it is specifically made clear that it will be presumed that newly added person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced. That would show that by virtue of Sub-section (4)(1)(b) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned. (See **Lok Ram v. Nihal Singh and Anr.**, 2006(2) RCR (Criminal) 707 : 2006(2) Apex Criminal 71.”*

“15. The factual position noted above goes to show that there was no new material after examination of the accused persons under Section 313 Criminal Procedure Code, which threw any light on the incident. The evidence of PWs 4 and 5 is not the basis of the application under Section 319 Criminal Procedure Code as they have not spoken anything about the appellants.”

9. I have also perused the findings recorded by the Trial Court in the impugned order. From a perusal of the statement of PW-1 Nanho Devi, it is evident that she had just reiterated the facts mentioned in the complaint in

Ex.P-1 and the Trial Court has rightly observed that no strong and cogent evidence has been placed on record by the prosecution to summon the proposed accused to stand trial in this case under Section 319 Cr.P.C. The Trial Court has also rightly observed that the petitioner could not point out any material to show that the police had not conducted the investigation fairly and impartially. Even otherwise, in her statement also, the petitioner did not lodge any case against the respondents No.2 to 8. The impugned order passed by the Trial Court does not suffer from any material irregularity, irregularity or perversity and is liable to upheld by this Court.

10. Sequally, the present revision petition stands dismissed.

17.08.2023
hitesh

(N.S.SHEKHAWAT)
JUDGE

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