

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

108+236

CRR-2068-2022 (O&M)

Date of decision: 16.03.2023

Brij Lal

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. V.P. Sangwan, Advocate for the petitioner.

Mr. Rahul Mohan, DAG, Haryana.

MANJARI NEHRU KAUL, J. (ORAL)

CRM-8944-2023

For the reasons mentioned therein, the application is allowed and copy of final report (challan) under Section 173 of the Cr.P.C. dated 02.09.2020 is taken on record as Annexure P-6 subject to all just exceptions.

CRR-2068-2022 (O&M)

Notice of motion was issued vide order dated 10.10.2022, however, there is no representation on behalf of respondent No.2 i.e. Surjeet Singh PW2 as he died during the pendency of the instant petition.

The instant revision petition has been filed to impugn the order dated 30.08.2022 passed by learned Additional Sessions Judge, Fast Track Special Court, Sirsa, in case CIS No.SC-225 of 2020 titled as 'State Vs. Sumitra' in FIR No.150 dated 14.07.2020 under Sections 302, 34 and 120-B of the IPC registered at Police Station Nathusari Chopta, District Sirsa, whereby the petitioner was summoned to face trial as an additional accused, after an application moved under Section

319 of the Cr.P.C. was allowed, by the Court concerned.

Learned counsel for the petitioner has vehemently argued that the petitioner has been arrayed as an accused for being a conspirator to the crime in question, solely on the basis of a disclosure statement allegedly made by co-accused, which to say the least, hardly carries any evidentiary value moreso in the absence of any evidence or material collected by the investigating agency to substantiate his involvement in the murders of Santro and Jalandhar Singh. Learned counsel has submitted that as per the FIR which was registered at the instance of Gori Shanker son of deceased Santro, after the death of his father, his mother i.e. deceased Santro had been in a live-in-relationship with deceased Jalandhar Singh at Village Nathusari Chopta in a house near water works, as a result of which the relations between deceased Santro and her children and their family had been strained and they were not on visiting terms with her. Learned counsel has further submitted that at about 03:00 P.M. in the afternoon, on 14.07.2020, the complainant learnt that Santro and Jalandhar Singh had been murdered in the above-mentioned house where they both were living together, by some unknown persons. Learned counsel for the petitioner while drawing the attention of this Court to the allegations levelled in the FIR, has submitted that a perusal of the same clearly reveals that no suspicion even by way of a whisper was raised by the complainant against anyone much less the petitioner. He has submitted that a thorough investigation was carried out by the investigating agency even after the alleged disclosure statements made by co-accused, however, no cogent evidence came to light qua the involvement of the petitioner

which could remotely point towards his complicity in the crime in question. Hence, he was rightly found innocent and placed in column No.2. Learned counsel still further while drawing the attention of this Court to the impugned order dated 30.08.2022, has submitted that the complainant i.e. son of deceased Santro while stepping into the witness box had not only reiterated the contents of the FIR but had not even by way of a whisper alleged anything against the petitioner. However, PW2 Surjeet Singh, father of deceased Jalandhar Singh, while stepping into the witness box deposed that his deceased son Jalandhar Singh had been on visiting terms with Santro, which was objected to by co-accused Sumitra i.e. daughter of Santro and Sonu, as they felt that Jalandhar Singh and his family were trying to grab the property of deceased Santro, and for the first time he levelled a vague allegation that the petitioner had been threatening him and his family to leave the village; he suspected that both the deceased had been murdered by accused Sonu (grandson of Santro), accused Sumitra (daughter of Santro) after conspiring with the petitioner and co-accused Ajay and Jasbir as they had brought disrepute to the family. Learned counsel vehemently urged that what the Court failed to appreciate was that when the petitioner was not even remotely related to either of the parties much less a beneficiary of the property of Santro, why would he then have conspired with the co-accused to commit the crime in question. Learned counsel submitted that as per the alleged disclosure statement suffered by co-accused i.e. grandson Ajay @ Sonu, he stated that on 13.07.2020 accused Sonu Kumar son of Rameshwar brought two iron gandasis, one iron cycle chain for carrying out the murders and

the petitioner had informed him about the presence of deceased Jalandhar Singh in the house of deceased Santro. Learned counsel submitted that in fact the disclosure statement on the basis of which the petitioner was being sought to be arrayed as a conspirator to the crime in question deserved to be rejected and was rightly discarded by the investigating agency qua the petitioner, as it ran contrary to the contents of the FIR in question wherein it had been categorically stated by the complainant that his mother Santro and Jalandhar Singh had been in a relationship and were living together in Village Nathusari Chopta in a house near water works. Learned counsel thus submitted that in the circumstances, there was no question of the petitioner informing the co-accused about the presence of deceased Jalandhar Singh in the house of deceased Santro when the fact of the matter was that as per the case of the prosecution also, they had been living and staying in that house together, prior to the occurrence in question and which fact was in the knowledge of the entire village.

Per contra, learned State counsel has argued that no doubt the petitioner was found innocent and placed in column No.2 by the investigating agency, however, is a statement under Section 161 of the Cr.P.C. made by respondent No.2 Surjeet Singh he stated that he and his family had been threatened by the petitioner to leave the village, which fact was in turn reiterated by him during his deposition during trial. Hence, in the above background, the petitioner was summoned to face trial as additional accused under Section 319 of the Cr.P.C. Learned State counsel also contended that it stood revealed from the disclosure statement made by co-accused Sonu that it was the petitioner

who after doing a recce informed the co-accused about the presence of deceased Jalandhar Singh in the house of deceased Santro. Hence, his complicity in the crime in question was writ large.

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

At the outset it is a matter of record that respondent No.2 on whose deposition the petitioner has been summoned under Section 319 of the Cr.P.C., has since died. Therefore, without there being an opportunity to cross-examine respondent No.2, his examination-in-chief would not be read in evidence.

A perusal of the FIR which was registered at the instance of Gori Shanker son of deceased Santro, reveals that he did not raise any suspicion about the involvement of any person in the double murders much less the petitioner. Not only this, even during investigation, after the FIR had been registered, at no stage did the complainant come forward to raise any suspicion much less by way of a whisper qua the involvement of the petitioner. It has not been disputed by even the learned State counsel that petitioner Brij Lal is not even remotely related to either of the two deceased or any of the other co-accused who are already facing trial. Still further, no cogent material or evidence came to light during trial much less during the deposition of PW2 Surjeet Singh from which it could be inferred that the petitioner would have somehow stood to gain on account of the murders of the two deceased. Admittedly, the only allegation against the petitioner is of being a conspirator. It needs to be noticed here that in a case resting on circumstantial evidence, motive to commit a crime plays an

important role, however, once no motive is forthcoming for the petitioner to either conspire to eliminate the deceased, either in the alleged disclosure statements made by co-accused who are already facing trial or even in the deposition of PW2 Surjeet Singh, this Court has no hesitation in observing that the impugned order summoning the petitioner has been erroneously passed. It may also be relevant to point out here that as per the disclosure statements made by co-accused the only allegation levelled against the petitioner is of having done a recce and thereafter having informed the co-accused that both the deceased were present in the house at the relevant time. All this shall have to be appreciated in the light of statements made by the complainant at the first instance while lodging the FIR in question wherein he had stated that for the past few years his mother deceased Santro had been living with deceased Jalandhar Singh at Village Nathusari Chopta in a house near water works as a result of which the relations between them were strained and they were not on visiting terms with each other. The complainant while stepping into the witness box as already observed earlier, reiterated the contents of the FIR. In the circumstances, this Court finds it very strange as to why would the petitioner, who as already observed hereinabove, had nothing to gain from the murders of the deceased, would have informed the co-accused about the presence of both the deceased in the house where the alleged crime took place. It is the admitted case of the prosecution that both the deceased were already living in the house. It is certainly not the case of the prosecution that only on the fateful day, deceased Jalandhar Singh happened to be visiting Santro, with whom he was allegedly in a relationship.

Before proceeding further, it would be apposite to reproduce the provisions of Section 319 of the Cr.P.C. which reads as under:-

"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 subsection (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."

It needs to be emphasized that mere levelling of an allegation against a person while making a statement under Section 161 of the Cr.P.C. or during trial, cannot be a ground to summon a person as an additional accused under Section 319 of the Cr.P.C. unless and until there is a reasonable probability of the case against the proposed accused ending in conviction for the offences alleged.

A Court while invoking its powers under Section 319 of the Cr.P.C., must meticulously consider the substance of the evidence

produced before it during trial.

The Constitution Bench of the Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab, (Constitution Bench) : 2014(3) SCC 92***, while dealing with the scope of Section 319 Cr.P.C., has held as under : -

“105. 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.

106. 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 un rebutted, 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.”

Thus, as laid down by the Constitution Bench in ***Hardeep Singh's case (supra)***, the nature of satisfaction has to be “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 un rebutted, would lead to conviction”. Furthermore, the additional accused summoned,

“has to be a person whose complicity may be indicated and connected with the commission of the offence”.

While dealing with a similar situation in *Labhuji Amratji Thakor Vs. State of Gujarat : (2019) 12 SCC 644*, the Court held that the mere fact that the Court has power under Section 319 of the Cr.P.C. to proceed against any person who is not named in the FIR or in the charge-sheet does not mean that whenever in a statement recorded before the Court, name of any person is taken, the Court has to mechanically issue process under Section 319 of the Cr.P.C.

In the present case, the Trial Court had accepted the application filed by respondent No.2 under Section 319 of the Cr.P.C. without satisfying the abovementioned test. Further, in the present case, the complainant neither named the petitioner in the FIR nor at any time thereafter.

Accordingly, the instant revision petition is allowed and the impugned order dated 30.08.2022 summoning the petitioner to face trial as an additional accused is set aside.

16.03.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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