

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

112

CRR-2079-2023

Date of decision: 19.09.2023

Ranjit Kaur

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Hitesh Chopra, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner-complainant is impugning the order dated 26.07.2023 passed by learned Session Judge, Gurdaspur in case FIR No.0086 dated 02.12.2019 under Sections 302, 34 of the IPC registered at Police Station Ghanie Ke Bangar, District Batala, whereby application filed by her under Section 319 of the Cr.P.C. for summoning respondents No.2, 3 and 4 (brothers in law and father in law of the deceased respectively) was dismissed.

2. Before proceeding further, it would be relevant to refer to the allegations levelled in the FIR annexed as Annexure P-1, which was registered at the instance of the petitioner-complainant (hereinafter referred to as 'the complainant') i.e. the mother of deceased, Ravinder Kaur (hereinafter referred to as 'the deceased') on 02.12.2019. It was alleged therein that the deceased had been married with accused Dilbagh Singh for 17 years. After serving in the Army, accused Dilbagh Singh had retired only 04 months prior to the occurrence in question, which took place on 01.12.2019. Allegedly accused Dilbagh Singh, his

brothers and father i.e. private respondents had been casting aspersions on the character of the deceased, as a result of which there remained some acrimony in the family; the deceased would also remain depressed on account of the same. Though the complainant had many a times tried to intervene and persuade the accused, including respondents No.2 to 4, to mend their ways, however, it had proved to be in vain; accused Dilbagh Singh, along with the private respondents had been asking the complainant to take the deceased away or she else would be eliminated. On 01.12.2019 at about 07:30 P.M., the complainant was informed by the Sarpanch of village Dabawal that the deceased had died because of strangulation/hanging at about 04:00 P.M. in her matrimonial home at village Dabawal. Complainant alleged that her deceased daughter had been killed by strangulation/hanging. During investigation, the police challaned only accused Dilbagh Singh i.e. the husband of the deceased, whereas respondents No.2 to 4 were placed in column No.2. During trial, the complainant stepped into the witness box as PW1. She reiterated the allegations levelled in the FIR against accused Dilbagh Singh as well as the private respondents and further deposed that they all had conspired to murder her daughter. Resultantly, application under Section 319 of the Cr.P.C. was moved by the prosecution to summon the private respondents as additional accused which, however, was dismissed vide impugned order. Hence, the present revision.

3. Learned counsel appearing for the complainant has vehemently argued that even though the complainant while stepping into the witness box as PW1 had reiterated the allegations levelled against respondents No.2 to 4, however, the Trial Court while passing

the impugned order failed to appreciate that all these three respondents had conspired with accused Dilbagh Singh to eliminate the deceased. He has submitted that respondents No.2 to 4 had been subjecting the deceased to continuous harassment and had also been casting aspersions on her character. So much so that they had asked the complainant to take her daughter i.e. the deceased, back to her parental home else they would eliminate her. Learned counsel has further argued that no doubt, respondent No.4, i.e. father in law of the deceased, was a 87 year old man, and was also suffering from diabetic feet for which he was undergoing treatment but that would not in any manner come in his way from conspiring with his son, accused Dilbagh Singh to carry out the alleged crime. Learned counsel has still further argued that respondent No.2 Bhupinder Singh was exonerated by the police because on the date of occurrence, he was posted at Jalandhar and was present at his work place and hence, could not have been possibly present at village Dabawal, where the deceased was done to death. Learned counsel has argued that even assuming for the sake of arguments, though not conceded, that on the day of the crime, Bhupinder Singh was not present at the place of occurrence, he could still have conspired to eliminate the deceased from a far off place. Learned counsel has still further argued that similarly qua respondent No.3 Harpal Singh, the Trial Court had erred in dismissing the application under Section 319 of the Cr.P.C., merely because there was no material to hint towards his presence at the place of occurrence, when the crime was committed. Learned counsel has asserted that mere absence at the place of occurrence would not prove the innocence of

respondent No.3 Harpal Singh, as conspiracy could be hatched even from a distance. It has, thus vehemently been argued that all this should have been appreciated along with the Post Mortem Report of the deceased (Annexure P-4), by the Trial Court, wherein the cause of death of the deceased was opined to be strangulation and not suicidal hanging. A prayer has, therefore, been made for summoning respondents No.2 to 4 to face trial along with accused Dilbagh Singh.

4. I have heard learned counsel for the parties and perused the relevant material on record including the deposition of the complainant annexed as Annexure P-5.

5. Section 319 of the Cr.P.C. deals with the power of a Court to proceed against such persons who appear to be guilty of an offence. A Constitution Bench of the Apex Court in ***Hardeep Singh Vs. State of Punjab, (Constitution Bench) : 2014(3) SCC 92*** while dealing with the scope and extent of power of a Court under Section 319 of the Cr.P.C. has held as under:-

“Section 319 Cr.P.C. springs out of the doctrine judex damnatur cum nocens absolvitur (which means, Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr.P.C.”

In essence, this principle also balances the rights of innocent individuals from being subjected to unfair trials and unjust punishment. The Apex Court in ***Hardeep Singh's case (supra)*** has further observed as as under:-

“98. 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.

99. 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."

6. It is thus obvious that Section 319 of the Cr.P.C. is an enabling provision, and an extraordinary power has been conferred upon the Court. Hence, this power has to be exercised by a Court with a great deal of circumspection; this power must be exercised primarily to advance the cause of criminal justice and not as a tool to cause harassment to a person who may not be involved in the crime in question. Furthermore, unless there is a reasonable probability of the case against the persons sought to be summoned as additional accused, ending in conviction for the offence alleged, the Court should desist from summoning him under Section 319 of the Cr.P.C.

7. Coming to the case in hand, it has not been disputed by the learned counsel for the complainant nor is it the case of the complainant

herself, that respondents No.2 to 4 were residing under the same roof along with accused Dilbagh Singh and the deceased. Admittedly, respondent No.4 Harbhajan Singh, father in law of the deceased, who is a 87 year old man is bed ridden and suffering from various ailments. Rather it had come during investigation that respondent Harbhajan Singh had been residing with respondent No.2 Bhupinder Singh in his house much prior to the occurrence in question.

8. Further, allegedly the occurrence in question took place on 01.12.2019 at about 04:00 P.M. Respondent Bhupinder Singh is admittedly working in the Police. It had come during investigation that he was on duty at Jalandhar at the relevant time. Undisputedly, his place of posting and the place of occurrence are not in the immediate vicinity and as apprised by the learned counsel for the petitioner himself is about 25-30 kms. away. Hence, his presence at the time of crime seems highly improbable. Similarly, respondent No.3 Harpal Singh was also not residing along with accused Dilbagh Singh and the deceased, which fact, has not been disputed by the learned counsel for the petitioner himself in the course of arguments before this Court. All these facts and circumstances need to be appreciated in the light of even the complainant not alleging that on the date and time of the alleged crime, respondents No.2 to 4 were present in the house or had been seen in close proximity to the place of occurrence. It would also be most relevant to refer to the Post Mortem Report (Annexure P-4) wherein as per the opinion given by the doctor, the deceased had died of asphyxia due to strangulation which was ante mortem in nature and sufficient to cause death in ordinary course of nature. A perusal of the

Post Mortem Report further reveals that no external injury was found on any part of the body of the deceased. Had it been a case wherein respondents No.2 to 4 had participated in the crime in question, there would have surely been some resistance put up by the deceased which in turn would have found reflected in the Post Mortem Report. Except the bald allegations levelled by the complainant that respondents No.2 to 4 had conspired to eliminate the deceased, there is no other cogent material on record to supplement her version.

9. As a sequel to the above, this Court does not find any merit in the instant revision petition which is accordingly dismissed.

10. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

19.09.2023

(MANJARI NEHRU KAUL)

Vinay

JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No