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

CRR-2240-2022 (O &amp; M)

Date of decision:10.08.2023

Kuldeep Singh

.... Petitioner

V/s

State of Punjab and anr.

...Respondents

**CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Ramandeep, Advocate, for the petitioner.

Mr. Kirat Singh Sidhu, DAG, Punjab.

Mr. P.S. Ahluwalia, Advocate, for respondent No.2.

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**JASJIT SINGH BEDI, J. (Oral)**

The present petition has been filed against the order dated 11.10.2022 whereby the application under Section 319 Cr.P.C. to summon respondent No.2/Kuldeep Kaur as an additional accused in case FIR No.16 dated 21.01.2020 under Sections 302, 34 IPC, at Police Station Sadar Samana, has been dismissed.

2. The present FIR came to be registered at the instance of the petitioner/complainant-Kuldeep Singh, son of Karnail Singh who stated that they were two brothers and two sisters. His elder sister, namely, Sarabjit Kaur (deceased) aged about 34 years, was married to Amrik Singh @ Lali son of respondent No.2-Kuldeep Kaur around 16 years ago. Two sons, namely, Damanpreet Singh, aged about 14 years and Yadvinder Singh, aged 12 years were born from the said marriage. Amrik Singh was working as a Veterinary doctor. Since the last one and a half years, his brother-in-

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@ Kala and their mother-Kuldeep Kaur (respondent No.2) had been giving beatings to his sister. A complaint had also been submitted by him in this regard at Police Station Mavi Kalan. Thereafter, on 19.01.2020, his brother-in-law/Amrik Singh @ Lali alongwith his relatives had come and had taken away his (petitioner's) sister Sarabjit Kaur to her matrimonial village Belu Majra. On the date of the occurrence, his brother-in-law/Amrik Singh @ Lali had called him and informed him that Sarabjit Kaur had committed suicide by hanging herself from a ceiling fan. On this he (complainant-Kuldeep Singh) alongwith his brother-Mandeep Singh and uncle-Jasbir Singh as well as certain other persons had gone to the spot i.e. the house of Amrik Singh at village Belu Majra where they found the dead body of his sister lying on the bed with strangulation marks on her neck. On their enquiry, they came to know that his brother-in-law/Amrik Singh and his mother, namely, Kuldeep Kaur had killed his sister-Sarabjit Kaur by strangulating her with the help of a rope. His brother-in-law often used to say while beating his sister that he would perform a second marriage after killing her and used to extend threats of divorce on some occasions.

3. Pursuant to the registration of the aforementioned FIR, an enquiry was conducted and it was found that respondent No.2-Kuldeep Kaur had not been present at the matrimonial home when the deceased was purportedly done to death by Amrik Singh-her husband. Based on the said enquiry report, the respondent No.2 was exonerated and the report under Section 173(2) Cr.P.C. was submitted against Amrik Singh @ Lali son of Pritam Singh.

4. After framing of charges, the statement of the complainant-petitioner Kuldeep Singh was recorded as PW-1, and thereafter, an

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application was moved under Section 319 Cr.P.C. to summon the respondent No.2 as an additional accused to face trial alongwith the accused already facing trial.

5. The said application under Section 319 Cr.P.C. was dismissed by the Court of Additional Sessions Judge, Patiala vide order dated 11.10.2022.

It is this order which is under challenge in the present petition.

6. The learned counsel for the petitioner contends that the Trial Court had ignored the fact that respondent No.2-Kuldeep Kaur had been duly named in the FIR. The statements recorded under Section 161 Cr.P.C. of the persons who had come to the spot alongwith the complainant-petitioner, namely, Mandeep Singh and Jasbir Singh clearly inculpated respondent No.2. The statement of the complainant-Kuldeep Singh recorded in the Court as PW-1 (Annexure P-4) also pointed towards the *prima facie* culpability of the respondent No.2 for which she ought to be summoned to face trial alongwith Amrik Singh @ Lali. In fact, she had wrongly been exonerated as per the enquiry report (Annexure P-5). Though, it has been stated in the report that the respondent No.2 had not been present at the matrimonial home when the deceased was done to death, the said finding was baseless as the time of the death was not known and it was possible that after committing the offence in question, the respondent No.2/Kuldeep Kaur had left the home. He, therefore, contends that as there was sufficient evidence to summon respondent No.2, the impugned order dated 11.10.2022 was liable to be set aside and the respondent No.2 ought to be summoned to face trial as an additional accused alongwith Amrik Singh @ Lali.

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7. The learned counsel for the State-respondent No.1, on the other hand, contends that a bare reading of the deposition of the complainant would establish the *prima facie* culpability of the respondent No.2, and therefore, she was liable to face trial alongwith the charge-sheeted accused.

8. The learned counsel for respondent No.2-Kuldeep Kaur, on the other hand, contends that both the accused including the answering respondent had been named on the basis of suspicion without any corroborative evidence whatsoever. In terms of Section 106 of the Evidence Act, at best, it could be the husband, who was to explain the unnatural death of his wife in the matrimonial home. The complainant had made a significant improvement in his statement recorded in the Court as PW-1 where he has stated that he had been told by the children of the deceased, namely, Damanpreet Singh and Yadvinder Singh that they had seen their mother being beaten up by Amrik Singh @ Lali and the respondent No.2-Kuldeep Kaur. He contends that firstly, the said two children of the deceased had not been associated during the course of investigation and their statements had not been recorded under Section 161 Cr.P.C. or as prosecution witnesses in Court. However, taking the version of the petitioner-complainant recorded as PW-1 to be correct, his evidence would amount to '*hear say*' evidence and was therefore, inadmissible. He, thus, contends that there was absolutely no substantive admissible evidence against the respondent No.2 for which she is ought to be summoned to face trial as an additional accused under Section 319 Cr.P.C.

9. I have heard the learned counsel for the parties and gone through the record.

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10. Before proceeding further, it would be apposite to refer to the provisions of Section 319 Cr.P.C. The same are reproduced hereinbelow:-

**“319 Cr.P.C. -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 sub- section (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.”*

11. The Hon’ble Supreme Court of India has dealt with the issue in hand in a number of judgments and two of the relevant judgments in this regard are reproduced hereinbelow:-

In **“Michael Machado and another versus Central Bureau of Investigation and another, 2000 (3) SCC 262”**, it was held as under:-

*“11. The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not*

enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.

12. But even then, what is conferred on the court is only a discretion as could be discerned from the words the court may proceed against such person. The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons”.

In ‘**Manjeet Singh versus State of Haryana & others, 2021(4)**

**RCR (Criminal) 25**’, it was held as under:-

“13. The ratio of the aforesaid decisions on the scope and ambit of the powers of the Court under section [319](#) CrPC, 1973 can be summarized as under:

- (i) That while exercising the powers under section [319](#) CrPC, 1973 and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;
- (ii) for the empowerment of the courts to ensure that the criminal administration of justice works properly;
- (iii) the law has been properly codified and modified by the legislature under the CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;
- (iv) to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;

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(v) where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial;

(vi) section [319](#) CrPC, 1973 allows the court to proceed against any person who is not an accused in a case before it;

(vii) the court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency;

(viii) section [319](#) CrPC, 1973 is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial;

(ix) the power under section [319](#)(1) CrPC, 1973 can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections [207](#) / [208](#) CrPC, committal, etc. which is only a pretrial stage intended to put the process into motion;

(x) the court can exercise the power under section [319](#) CrPC, 1973 only after the trial proceeds and commences with the recording of the evidence;

(xi) the word "evidence" in section [319](#) CrPC, 1973 means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents;

(xii) it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under section [319](#) CrPC, 1973 is to be exercised and not on the basis of material collected during the investigation;

(xiii) if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under section [319](#) CrPC, 1973 and can proceed against such other person(s);

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(xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under section [319](#) CrPC, 1973 can be exercised;

(xv) that power under section [319](#) CrPC, 1973 can be exercised even at the stage of completion of examination-in-chief and the court need not wait till the said evidence is tested on cross-examination;

(xvi) even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of section [319](#) CrPC, 1973 and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses);

(xvii) while exercising the powers under section [319](#) CrPC, 1973 the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial”.

12. A perusal of Section 319 Cr.P.C. as also the judgment in Michael Machado case's (supra) and Manjeet Singh's case (supra) would clearly show that the Court has wide powers to summon a person as an additional who has been exonerated by the Investigating Agency, if it finds that there is sufficient evidence available against the said person in order to try him along with the accused already facing trial. However, there is no compelling duty to summon an accused. The discretionary power so conferred should only be exercised to achieve justice and must be based on the quality of evidence collected. In fact, the Court being the sole repository of justice, there is a duty cast upon it to uphold the law and ensure that the

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real accused should not get away by manipulating the Investigating Agency/Prosecuting Agency. What the Court needs to examine while adjudicating upon an application under Section 319 Cr.P.C. is that there should be evidence available on the file in the shape of oral evidence or documentary evidence in order to invoke its powers to summon an additional accused under Section 319 Cr.P.C.

13. Coming back to the facts of the present case, it is apparent that Amrik Singh @ Lali and respondent No.2-Kuldeep Kaur, his mother had been named on the basis of suspicion. During the course of investigation, it was found that respondent No.2 had not been present in the matrimonial home on or about the time of the incident. The deceased is said to have been murdered by Amrik Singh @ Lali her husband. Be that as it may, a perusal of the statement of the complainant/petitioner-Kuldeep Singh recorded as PW-1 would reveal that he has significantly improved his version from the one that he gave at the initial stage. While deposing as PW-1, the petitioner has stated that his nephews Damanpreet Singh and Yadvinder Singh had told him that their mother had been assaulted by their father and grand-mother (respondent No.2). However, at the time, when the FIR was registered, no such reference was made of the nephews disclosing to the petitioner that their mother had been assaulted. However, taking the deposition to be the absolute truth, the statement of the petitioner to the extent that he had been told by his nephews about the assault on their mother at the instance of the father and the grand-mother would amount to '*hear say*' evidence and thus, inadmissible. Therefore, quite apparently, no admissible evidence is available on the record to summon the respondent No.2-Kuldeep Kaur as an

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14. In view of the above, I find no merit in the present petition and the same stands dismissed.

( JASJIT SINGH BEDI)  
JUDGE

August 10, 2022  
Sukhpreet

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