

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

244

CRR-2628 of 2019 (O&M)

Date of Decision:01.08.2023

Raj Kaur

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Ajit Singh Lamba, Advocate,
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana

Mr. Rakesh Nagpal, Advocate,
for the respondent No.2.

JASGURPREET SINGH PURI, J. (Oral)

1. The present is a revision petition filed for challenging the order dated 13.08.2019 passed by the learned trial Court while dismissing the application under Section 319 of the Code of Criminal Procedure qua respondent No.2. Learned counsel for the petitioner submitted that in the present case there are two private respondents and on 09.03.2022 he had specifically stated that he does not wish to press the petition at this stage qua respondent No.3 because he was already facing the trial, therefore he is pressing the present petition only qua respondent No.2 qua which the application under Section 319 of the Code of Criminal Procedure has been dismissed.

2. Learned counsel for the petitioner submitted that it is a case where the

petitioner who is a lady of the age of 30 years had lodged the FIR whereby her husband was killed. He submitted that the petitioner is an eye witness to the incident and the entire description has been so stated in the FIR that respondent No.2 had hit her husband with *Gandasa* on head and on shoulder who thereafter died. The same was again reiterated at the time when she deposed as prosecution witness as PW1 and thereafter the application was moved under Section 319 of the Code of Criminal Procedure. He further submitted that a perusal of the impugned order dated 13.08.2019 passed by the learned Addl. Sessions Judge, Fatehabad whereby the application for summoning of an additional accused under Section 319 of the Code of Criminal Procedure has been dismissed would show that the record available with the learned Court was not properly appreciated. He submitted that although it is correct that while summoning of an additional accused under Section 319 of the Code of Criminal Procedure abundant caution has to be exercised and for strong reasons an additional accused should be summoned because it affects the right of an individual but that would not mean that the application for summoning of an additional accused under Section 319 of the Code of Criminal Procedure should be dismissed without even considering and appreciating the entire record of the case available with the learned trial Court. He submitted that in the impugned order the learned Court has referred to the injuries on the deceased Gulab Singh by stating that there was only one incised wound on the parietal region scalp of the deceased Gulab Singh and observed that there is only one head injury on the scalp of the deceased which has been found to be attributable to the accused facing trial i.e. respondent No.3 and there is no sharp injury on the shoulder of the deceased. Learned counsel has however brought to the notice of this

Court the medical report which has been reproduced at page 12 of the paper-book to show that in fact there were four injuries on the deceased and there was one more incised wound on the left forearm with a sharp weapon and the injuries which have been so mentioned are reproduced as under:-

- “i) Defuse Swelling right fronto-temporal-parietal region of scalp. Advised general surgeon opinion – Blunt weapon.
- ii) Defuse Swelling left temporo-parietal region of scalp. Advised general surgeon opinion – Blunt weapon.
- iii) Incised wound 3x0.5 cms on mid parietal region of scalp. Advised general surgeon opinion -Sharp weapon.
- iv) Incised wound 5x2 cms on ventral aspect of left forearm. Advised ortho opinion – Sharp weapon.”

3. He submitted that the aforesaid injuries very clearly suggest that the injury was caused by a sharp weapon on the deceased and even otherwise it was only to be seen at the time of trial that whether the injury was caused by the present respondent No.2 on both the sides i.e. by using a sharp side and on the blunt side but at least the medical opinion was required to be taken into consideration while deciding the application under Section 319 of the Code of Criminal Procedure apart from the other investigation being conducted by the police in this regard but no other reference was made with regard to any other material which was available on record and for only the medical opinion which was erroneously considered by the learned trial Court. He submitted that the law laid down by a Constitutional Bench of the Hon'ble Supreme Court in Hardeep Singh versus State of Haryana 2014 AIR (SC) 1400 has not been properly followed and because there had been no proper application of mind by the learned trial Court.

4. On the other hand, Mr. Rakesh Nagpal, learned counsel for respondent No.2 submitted that the order has been rightly passed because even as per the order there is no sharp injury on the shoulder of the deceased. He further submitted that after the aforesaid impugned order was passed one more witness was examined as PW9 who although was not present on the spot but had stated that respondent No.2 was not involved in the offence and therefore there is no wrong in the impugned order passed by the learned Addl. Sessions Judge, Fatehabad.

5. I have heard the learned counsel for the parties.

6. It is a settled law that for the purpose of summoning of an additional accused under Section 319 of the Code of Criminal Procedure the Court has to be extremely cautious because after an accused has already been exonerated by the police and he is required to be summoned, strong reasons have to be given by the learned trial Court. However, the reasons should be based upon the material available on record and which should be properly appreciated. However, a perusal of the impugned order would show that the material which was available on record especially the medical report has not been properly appreciated by the learned trial Court in view of the injuries which have been so mentioned in the medical report as reproduced by the petitioner in the present case. This Court would therefore not go into the details of the above but *prima facie* is of the view that the impugned order is erroneous order and therefore is liable to be set aside.

7. Consequently, the petitioner petition is allowed and the impugned order dated 13.08.2019 is set aside. The learned Addl. Sessions Judge, Fatehabad is directed to pass a fresh order after hearing learned counsels strictly in accordance with law and in the light of a judgment of a Constitutional Bench of the

Hon'ble Supreme Court in *Hardeep Singh's case* (supra). The passing of fresh order will not be influenced by the earlier order which was passed and also the present order which has been passed by this Court and the learned Addl. Sessions Judge will apply his fresh mind strictly in accordance with law. The order shall be passed within a period of four weeks from the date of receipt of a copy of this order.

(JASGURPREET SINGH PURI)
JUDGE

August 01, 2023
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Whether speaking	:	Yes/No
Whether reportable	:	Yes/No