

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRR No.2216 of 2023
Date of decision: 07.12.2023

Bahadur Singh

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Kartar Singh, Advocate,
for the petitioner.

Mr. Arjun Lakhanpal, Addl. AG, Haryana.

MANISHA BATRA, J.

1. The instant petition has been filed by the petitioner for setting aside the order dated 19.08.2023 passed by the Court of learned Additional Sessions Judge, Fatehabad in Sessions case No.93 of 2021 arising out of FIR No.200 dated 01.06.2020 registered under Section 306 of IPC at Police Station Sadar, Fatehabad titled as *State v. Sukhdev*, whereby an application filed under Section 319 of Cr.P.C. by the petitioner who is the complainant in that case for summoning of eight persons namely, Chameli, Mam Raj, Rekha Devi, Sukhdev Singh, Ramesh, Mukesh, Madan and Bhima as additional accused, was dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of statement recorded by the complainant Bahadur Singh alleging therein that the marriage of his daughter Usha was solemnized with the accused Sukhdev in the year 2006. After her marriage, his daughter was harassed by the accused Sukhdev and other members of his family i.e. mother-in-law, father-in-law, his brother Rakesh, Mukesh wife of Rakesh and sister-in-law Rekha Devi. She was extended beatings by them. The petitioner had tried to prevail good sense upon them several times but they did not mend their ways. Her daughter had also informed her maternal aunts namely, Panno Devi and Saroj that accused Sukhdev was maintaining illicit relationship with Mukesh wife of his brother Rakesh which was upsetting her. He alleged that on 29.05.2020, the above named persons along with the accused Sukhdev and Madan Sarpanch of their village had extended brutal beatings to his daughter and on 30.05.2020, he came to know that his daughter had committed suicide by jumping into Bhakhra lake. He prayed for taking penal action against the culprits. Investigation proceedings were initiated. During investigation, the accused Sukhdev was arrested. The remaining persons named in the FIR were found to be innocent and they were not arrested and challaned and their names were kept in column No.2 of the challan report. After completion of investigation, challan was presented against the accused Sukhdev who is facing trial for commission of offence punishable under Section 306 of IPC. It has come on record that after recording of

statement of the present petitioner by way of examination-in-chief, an application had been moved by him under Section 319 of Cr.P.C. for summoning the above named Chameli etc. as additional accused and for directing them to face trial along with the accused Sukhdev but this application had been dismissed by learned trial Court.

3. The instant petition has been filed on the grounds and it has been argued by learned counsel for the petitioner that the impugned order dated 19.08.2023 is not sustainable in the eyes of law as there is overwhelming evidence in the nature of testimony of the petitioner on record of the trial Court to show that the above named proposed accused were involved in the act of abetment to cause the death of his daughter and were liable to be summoned and tried as additional accused. The learned trial Court, however, did not appreciate the evidence produced on record in this regard in a proper manner and gravely erred in dismissing the application filed by the petitioner. With these broad submissions, he has argued that this petition deserves to be allowed, the impugned order deserves to be set aside and that the proposed accused are liable to be summoned as additional accused for commission of aforesaid offence to face trial along with the accused already arraigned.

4. The respondent-State has filed status report submitting therein that after conducting thorough investigation in the matter, the proposed accused were found to be innocent and that is why they had not been arrested and challaned.

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

State counsel and have perused the record carefully.

6. Section 319 of Cr.P.C. empowers the Court to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with other accused. The principle of law with reference to exercise of jurisdiction under this Section has been well settled by the Constitution Bench of Hon'ble Supreme Court in a celebrated pronouncement cited as **Hardeep Singh and others Vs. State of Punjab and others**, (2014) 3 SCC 92, wherein it was observed that the power under Section 319 Cr.P.C. is discretionary and an extraordinary power. It has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. 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 material placed before the Court that such power should be exercised and not in a casual and cavalier manner. It was also observed 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 strong evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as has been established at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the Court

should refrain from exercising power under Section 319 of Cr.P.C.

7. Reference can also have made to a recent pronouncement of Hon'ble Supreme Court cited as **Sagar Vs. State of UP and another**, (2022) 6 SCC 389, wherein the Apex Court observed as under:-

“ The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as notice above has to be applied is one which is more that 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.... ”

8. It is also well settled proposition of law that an order under Section 319 of the Cr.P.C. should not be passed only because the first informant or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be assigned by the Court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. The evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction and for this purpose, the Courts are required to apply stringent tests, one of such tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

9. On applying the above discussed principles of law to the peculiar facts and circumstances of the present case, this Court is of the

considered opinion that the learned trial Court committed no illegality in dismissing the application filed by the petitioner. Undisputedly, while lodging the FIR, the petitioner had taken the names of the above named persons alleging their involvement in causing harassment to the victim leading to commission of suicide by her. It has, however, been revealed that thorough investigation had been conducted in the matter by the police and they were found to be innocent. Their names were accordingly kept in column No.2 of the challan report and they were not arrested and challaned. On perusal of a statement recorded by the present petitioner before the Court (Annexure P-2), it is revealed that in his examination-in-chief, he stated before the trial Court that the accused Sukhdev had raised demand of TV trolley within the six months of her marriage. He used to quarrel with his daughter and that his daughter had told about the accused Sukhdev being in illicit relationship with the wife of his younger brother. He further stated that the accused Sukhdev used to quarrel with his daughter under the influence of liquor and extended beatings to her. In the concluding part of his examination-in-chief, he is shown to have stated that he suspected that the proposed accused along with accused Sukhdev had committed the murder of his daughter Usha and had kept her dead body concealed in his house.

10. The question that arises for consideration is as to whether on the basis of the statement so made by the petitioner as discussed above, it can be concluded that the proposed accused had a hand in the subject crime. It may be stated that the accused Sukhdev is facing trial for

commission of offence punishable under Section 306 of IPC and has not been charge-sheeted for commission of offence of murder. The statement of the petitioner as recorded before the trial Court does not show that he was a witness to the alleged murder of the victim or that she had actually been murdered. Rather he is shown to have raised a suspicion that the victim had been murdered and her dead body was kept concealed. A perusal of challan report reveals that thorough investigation was made by the investigating agency in the matter and the complicity of the proposed accused had not been established. Vague allegations have been levelled against them. The proposed accused Madan is not even family member of the accused Sukhdev and he was the then Sarpanch of the village. It is not made out as to how he was involved in the occurrence. The remaining proposed accused are family members of the accused Sukhdev. Mere casual reference of their names without allegation of their active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of the experience that there is tendency to involve the entire family members of the household in matrimonial disputes. Neither any specific instances of subjecting the victim to harassment at the hands of the proposed accused had been quoted nor from the allegations in the FIR, their involvement in the subject crime has been established. On the basis of mere probability of their complicity, they could not be summoned to face trial along with the co-accused already arraigned. The learned trial Court had also taken up all these points into consideration and in my considered opinion, it has

rightly refrained itself from exercising power under Section 319 of Cr.P.C. and summoning the proposed accused as such. Accordingly, finding no valid reasons to take a view different as that from the learned trial Court, I find no reasonable ground to interfere with the impugned order, the petition is dismissed.

07.12.2023
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No