

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.586 of 2020 (O&M)

Date of Reserve: 13.03.2024

Date of Decision: 09.04.2024

PURUSHOTAM GOYAL

.....Petitioner(s)

Vs

THE STATE OF HARYANA AND OTHERSRespondent(s)

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*

Present: Mr. Lalit K. Gupta, Advocate for the petitioner.

Mr. Gurmeet Singh, AAG, Haryana

Mr. Deepender Singh, Advocate for respondent Nos. 2 to 4.

HARKESH MANUJA, J.

[1]. By way of present revision, petitioner prays for setting aside of an order dated 14.01.2020 passed by Additional Session Judge, Faridabad (hereinafter referred to as "Trial Court") in case no 269 of 2019 arising out of FIR no. 1 dated 02.01.2019 under Sections 306 and 34 of Indian Penal Code, 1860 (hereinafter referred to as "IPC") whereby an application filed by the petitioner invoking Section 319 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C") for summoning respondent nos. 2 to 4 was dismissed.

[2]. Brief facts of the case are that son of the petitioner, Dheeraj Goyal, got married to daughter of Respondent nos. 2 and 3, namely, Rashmi Goyal on 13.07.2016 and soon thereafter marital dispute started between them. Rashmi Goyal filed a complaint under Section 498-A of IPC against Dheeraj Goyal on 25.10.2018 which led him to commit suicide on 22.12.2018. An FIR No.01 dated 02.01.2019 was lodged at Police Station GRP Faridabad, District Faridabad at the behest of petitioner alleging that his son committed suicide due to abetment of

respondent Nos.2, 3 and 4 and Rashmi Goyal while relying upon suicide notes, WhatsApp message and e-mail written by Dheeraj Goyal. The police, upon investigating the matter submitted a final report under Section 173 of Cr.P.C dated 24.07.2019 wherein respondent Nos.2, 3 and 4 were exonerated. During trial, the petitioner appeared as PW-1 and deposed on the line of complaint and made Respondent nos. 2, 3 and 4 alongwith Rashmi Goyal liable for the suicide committed by his son. Thereafter, on 04.01.2020 petitioner filed an application under Section 319 Cr.P.C before the Trial Court for summoning respondent nos. 2, 3 and 4 as additional accused to face trial and the Trial Court after considering the same dismissed it vide order dated 14.01.2020 and, thus, the present revision.

[3]. Learned Counsel for the petitioner submitted that Trial Court committed a grave error while dismissing the application filed under Section 319 Cr.P.C as respondent nos. 2, 3 and 4 were the main instigators which led to the commitment of suicide by son of the petitioner. He further submits that the police did not collect relevant material qua the complicity of Respondent Nos.2, 3 and 4 and therefore challan was not prepared against them and in this regard Id. Counsel placed reliance upon e-mail, suicide notes and WhatsApp message dated 05.10.2018, wherein the deceased Dheeraj Goyal specifically mentioned reasons and persons responsible which forced him to take the extreme step of committing suicide. He also placed reliance upon the testimony of petitioner which was recorded on 04.01.2020 while appearing as PW-1 before the Trial Court wherein he specifically made attributions to respondent Nos.2, 3 and 4. He further argued that Id. Trial Court arrived at incorrect conclusion while dismissing the application under Section 319 Cr.P.C by not taking into consideration the deposition made by

the petitioner while appearing as Pw-1 and the fact that at summoning stage no fresh evidence was needed.

[4]. On the other hand learned State Counsel and the learned counsel representing respondent Nos.2, 3 and 4 opposed the prayer made on behalf of the petitioner and submitted that the Trial Court rightfully based its findings on the final report submitted by the Police wherein respondent Nos.2, 3 and 4 were exonerated on being found innocent. It was submitted that mere allegations levelled by the petitioner in his testimony while appearing as PW-1 on 04.01.2020, could not be treated to be conclusive proof of the complicity of respondent nos. 2, 3 and 4 in the alleged offence under Section 306 of IPC and thus the order passed by the Trial Court warrants no interference.

[5]. I have heard learned counsel for the parties and gone through the paper book. I am unable to find substance in the submissions made by learned Counsel for the petitioner.

[6]. Upon perusing the record it is evident that son of the petitioner, namely Dheeraj Goyal and the daughter of Respondent Nos.2 and 3 i.e. Rashmi Goyal, had marital discord, due to which Dheeraj left his home on 05.10.2018, leaving behind suicide note and e-mail naming his wife, Rashmi Goyal, as well as respondent Nos.2, 3 and 4 for taking ghastly step of committing suicide and later was found dead near railway tracks of Faridabad on 22.12.2018. Ld. Trial Court in the impugned order dated 14.01.2020 while dismissing the application filed under Section 319 Cr.P.C came to the conclusion that respondent Nos.2, 3 and 4 were found innocent in the final report dated 02.01.2019 filed under Section 173 Cr.P.C, wherein after thorough investigation and analysis of call data records between deceased as well as respondent Nos.2, 3 and 4, they were not proposed to be

summoned as accused and further the fact that petitioner's statement as PW-1 was nothing more than re-iteration of his complaint Ex.PA which led to the registration of FIR and said allegations were duly investigated by the Police and thus such averments made in the statement of petitioner as PW-1 without any fresh evidence could not be said to be enough to invoke extra ordinary jurisdiction under Section 319 Cr.P.C. A perusal of aforesaid final report also shows that even though there were direct allegations levelled by the petitioner in his complaint against the private respondents, but upon verification of their call records there were no phone calls exchanged between the deceased and respondent Nos.2, 3 and 4 and, thus there was no *prima facie* or apparent material to establish any abetment, facilitation, intention or involvement of private respondents to aid or instigate the commission of offence, so to aid the deceased to commit suicide. Relevant excerpt thereof the final report is reproduced hereunder: -

“During investigation call details of Smt Rashmi Goyal w/o deceased of Mobile No. 8700768280 and 8750124379, Yogender Goyal's Mobile No. 9891594350 and Mobile of Smt. Madhu Goyal 84471915 and Mobile No. 9810748833 of Shri Ravinder Goyal Uncle/father in law of the deceased, mobile No. 8800335632 of Sh. Purshottam Dass Goyal and Mobile No. 8800335632 of deceased Dheeraj Goyal were obtained and after due analysis it was found that there were no call exchanges for about two months earlier between accused Shri Yogender Goyal, Smt. Madhu Goyal and Smt. Ravinder Goyal with Mobile number of the deceased or the complainant. It was further found that deceased Dheeraj Goyal had made a phone call to accused Rashmi Goyal on the day of the incident. The accused had not made any call. During investigation accused Smt. Rashmi Goyal was granted interim bail and as per the orders of the Hon'ble Court she was joined in the investigation and was formally arrested in the case. During investigation other accused Yogender Goyal (father in law), Smt. Madhu Goyal (mother in law) and Sh. Ravinder Goyal (Uncle/father in law) were joined in the investigation. The facts of the case were verified by SHO and were also got verified by from DSP Sir, Railway Faridabad. The

other accused were found innocent and accordingly Section 34 IPC was deleted.”

[7]. Hon’ble Supreme Court in case of ***Hardeep Singh Vs State of Punjab, 2014(1) R.C.R (Criminal) 623***, summed up the conclusions and scope arising out of Section 319 Cr.P.C. Relevant conclusions from para No.110, is as under:-

“110. We accordingly sum up our conclusions as follows :

Question Nos. 1 & III

Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND

Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

*A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused. ? Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the charge-sheet. **In view of the above** position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.*

Question No. II

Q.II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. IV

*Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the **court is satisfied** that the accused summoned will in all likelihood be convicted?*

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No. V

Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of

Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh.”

[8]. As per the point of law exposit hereinabove, the degree of satisfaction required under Section 319 Cr.P.C is much higher than the *prima facie* satisfaction at the time of summoning an additional accused. The test to be applied is one which is more than *prima facie* case as required at the time of framing of charge and just short of final conclusion. The scope of extent of powers of Court to summon any person as an accused during course of trial in exercise of powers under Section 319 Cr.P.C has been set at rest by the aforesaid **Hardeep Singh's** case (supra). The legal position has further been summarized in para Nos.98 and 99 of the aforesaid judgment. For ready reference para Nos.98 and 99 of the said judgment are reproduced hereunder:-

“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.”*

[9]. Further, a coordinate Bench of this Court in case of *Laxmi vs State of Haryana and another, 2018(1) R.C.R (Criminal) 987*, held also that for summoning a person under 319 Cr.P.C, compelling fresh evidence must be there apart from the allegation levelled in the complaint. Relevant paragraphs thereof are reproduced as under:-

“12. No doubt, Section 319 Cr.PC provides that 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.

13. However, at the same time, no person on an application under Section 319 Cr.PC can be summoned as an additional accused merely on the basis of statement of the complainant recorded in the Court unless there is material to summon. In order to summon an accused, some "fresh evidence" must have come on record so as to impel the Court to summon such person as an additional accused.”

[10]. Applying the law enunciated hereinabove upon the facts and circumstances of the case in hand, the order dated 14.01.2020 passed by the Trial Court in case no 269 of 2019 arising out of FIR No.01 dated 02.01.2019 under Sections 306 and 34 of IPC whereby an application filed by the petitioner under Section 319 of Cr.P.C for summoning of respondent no. 2 to 4 was dismissed warrants no interference and thus present revision petition is dismissed.

[11]. Pending miscellaneous application(s) if any, shall also stand disposed of.

April 09, 2024

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Whether speaking/reasoned

Whether reportable

(HARKESH MANUJA)

JUDGE

Yes/No

Yes/No