

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

116

CRR-544-2024(O&M)

Date of order: 18.03.2024

Rajiv Kumar

.....Petitioner(s)

Vs.

State of Haryana & Others

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Tarunveer Vashist, Advocate
for the petitioner.

Mr. R.S. Arya, AAG Haryana.

Nidhi Gupta, J.

Challenge in the present petition is to order dated 12.02.2024 passed by learned Additional Sessions Judge, Faridabad whereby application filed under Section 319 Cr.P.C. for summoning respondents No.2 to 4 as additional accused to face trial in case titled as 'State of Haryana Vs. Sandeep Narula' CIS SC 623-2020, has been dismissed.

2. Learned counsel for the petitioner inter alia submits that respondent No.2 is the father-in-law, respondent No.3 is the brother-in-law and respondent No.4 is the aunt-in-law of the deceased daughter of the petitioner. It is submitted that daughter of the petitioner was married to son of respondent No.2 on 02.10.2017. On 11.07.2019, daughter of the petitioner allegedly committed suicide.

3. Learned counsel for the petitioner submits that the petitioner had made categoric allegations in his testimony as PW 18 that

respondents No.2 to 4 were responsible for the death of his daughter. However, in passing the impugned order the said evidence has been ignored by the learned trial Court. It is contended that the impugned order has been passed only on the ground that after filing of the challan, no new evidence has come on record. It is submitted that this was not so as the petitioner in his testimony (Annexure P1) had made clear allegations against respondents No.2 to 4.

4. It is submitted that as per section 319 (1) CRPC, it is stipulated that: –

(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.

5. It is argued that ‘evidence’ in the provision above would include the testimony of the petitioner; and in his testimony, the petitioner had made categoric allegations against the respondents. It is submitted that as such, the learned trial court was in patent error in recording that no new evidence had come on record.

6. No other argument is made on behalf of the petitioner.

7. I have heard learned counsel for the petitioner and perused the case file in detail.

8. Perusal of record of the case shows that on 11.07.2019, the respondent no.2/ father-in-law of the deceased had lodged a complaint

at Faridabad Police Station stating that the deceased had left her matrimonial home in Faridabad at around 3:00 PM without telling anyone. It was accordingly requested that the whereabouts of the deceased be traced. On the basis of statement of respondent No.2/father-in-law of the deceased FIR No.313 dated 11.07.2019 under Sections 306 and 34 IPC was registered at Police Station Dabua, Faridabad. As per the FIR, his daughter-in-law Jyoti Sharma/deceased had gone somewhere without informing anyone. The complainant had tried looking for her and was unable to trace her.

9. Admittedly, thereafter respondent No.2/father-in-law of the deceased had even informed the petitioner. The petitioner has admitted that on 11.07.2019, at around 5:00 PM, he received a phone-call from the father-in-law of the deceased, wherein he made the Petitioner aware of the fact that the deceased has been missing. Thereafter the petitioner had reached his daughter's matrimonial home on 12.7.2019. Upon reaching there, it came to the knowledge of the petitioner that his daughter had passed away and that her corpse was found near Sonapat Railway Station, Haryana. Upon this, the petitioner lodged a complaint bearing number 99-5 PII at the Faridabad Police Station on 13.07.2019. The above said facts have been admitted by the petitioner in the aforesaid complaint dated 13.7.2019.

10. Admittedly, neither in the complaint filed by the petitioner nor in the challan under Section 173 Cr.P.C., names of respondents No.2 to 4 have been mentioned.

11. The main plank of the argument made on behalf of the petitioner is that even if that is so, respondents No.2 to 4 can be tried as accused on the basis of 'evidence' led by the petitioner in the form of his testimony (Annexure P1). Annexure P1 reads as under:-

"Stated that on dated 31.3.2019 my daughter namely Captain Jyoti Sharma was taken by Sandeep Kumar to Faridabad as her delivery was due. On 10 May 2019 my daughter gave birth to daughter. She telephonically informed me that she has been admitted in the Hospital Faridabad and asked me to come to Hospital. Next day I alongwith my wife reached the hospital where I stayed for two days and my wife stayed for 10 days in Sandeep House. Thereafter I alongwith my daughter Pooja Sharma and maternal aunt performed the ceremonies(Shagun etc.) On 11.7.2019 I received a call from my daughter who asked me to clean her quarter situated at Jalandhar Kant. On which I alongwith my wife cleaned the quarter of my daughter. On 11.7.2019 at about 5:15 PM. I received call from Sushil Kumar Narula who told me that your daughter Captain Jyoti Sharma has gone some where from Faridabad. Sushil Kumar further told me that she has left all her items in the house namely currency notes, clothes and her daughter He also told me to come to Faridabad and search Jyoti Sharma. All night I received a call from Sushil Kumar, Sandeep Narula to come to Faridabad. On 12.7.2019 at about 7:00 AM, I alongwith my wife, friend Ashok Kumar. Jitender Kumar and Anita Rani visited reached Faridabad. Sushil Kumar handed over to us a suicide note(photocopy). Sandeep showed me three photographs on his mobile phone of dead bodies and told me that the dead body of Sonipat is similar to Jyoti. Thereafter. we left for Sonipat in two different vehicles. In between I called Sandeep on which he told me that he has reached the Patrol Pump. I again called him on which he stated that his vehicle

has broken down. He told me that he has come back to his house at Faridabad. He also told me dead body of my daughter is lying in Central Hospital Sonipat. Thereafter, we reached Central Hospital Sonipat. We identified the dead body of Jyoti in the Hospital and the post mortum was already got conducted. My daughter was killed by Sushil Kumar Narula, Sandeep Kumar Narula, Versha Rani and Manish Kumar Narula. I gave a complaint Ex.PW18/A in PS Dabua, Faridabad which bears my signatures at point A. I identified the accused person present in the court today. At this stage, an application under Section 319 Cr.P.C. has been moved by the complainant counsel.”

(Emphasis added)

12. From the above, it is clear that even in the testimony of the petitioner recorded on 29.01.2024, nothing has been said of such incriminating nature that merits the summoning of respondents No.2 to 4 as accused under Section 319 Cr.P.C.

13. In respect of the parameters of Section 319 Cr.P.C reference may be made to judgment of the Hon’ble Supreme Court in the case titled as **“Sarabjit Singh & Anr. Vs. State of Punjab & Anr., (2009) 16 SCC 46:** wherein it has been held that:

“17....An order under Section 319 of the Code, therefore, 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. Such an evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction. For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being

whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned. XXXX”

14. The aforementioned view has been reiterated by the Hon'ble Supreme Court in the case of **“Hardeep Singh Vs. State of Punjab and Others, (2014) 3 SCC 92”**, wherein it has been held that power under Section 319 Cr.P.C. is a discretionary and extraordinary power, which has to be exercised sparingly and cautiously only in those cases where the circumstances so warrant. In this regard, the following observations as contained in Paras 98 and 99 of **Hardeep Singh's case (supra)** are relevant and are reproduced hereinbelow:-

“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 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.”

15. Learned counsel for the petitioner is unable to controvert the above said factual and legal position.

16. In view of the facts and legal position as noted here in above, I find no infirmity in the impugned order dated 12.02.2024 passed by learned Additional Sessions Judge, Faridabad. Present petition accordingly stands **dismissed**.

17. Pending application(s) if any also stand(s) disposed of.

18.03.2024		(Nidhi Gupta)
Sunena		Judge
Whether speaking/reasoned	Yes/No	
Whether reportable	Yes/No	