

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.750 of 2022 (O&M)
Date of Decision: 12.02.2024

Gandharav Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Vipin Mahajan, Advocate
for the petitioner.

Mr. Tarun Aggarwal, Sr. DAG, Punjab
for respondent No.1-State.

Mr. R.S. Manhas, Advocate
for respondent No.2.

PANKAJ JAIN, J. (Oral)

Present petition is directed against the order dated 26th of July, 2021 passed by Additional Sessions Judge, Pathankot whereby the petitioner has been summoned as additional accused invoking Section 319 of the Code of Criminal Procedure, 1973 to face trial *qua* offence punishable under Section 302 IPC in case FIR No.22 dated 4th of April, 2019 registered, at Police Station Shahpur Kandi (Pathankot).

2. FIR came into being on information supplied by Deepak Pathania alleging that on 3rd of April, 2019 at about 9:30 p.m. his uncle Surjit Singh went to dera for sleeping. On 4th of April, 2019 at about

6.45 a.m. when the complainant along with his friend Rajiv Patwal went to dera they found his uncle Surjit Singh lying dead on the bench with both of his legs and right hand tied with the rope and blood oozing from his mouth. After 5 days of the occurrence Deepak Pathania suffered a supplementary statement claiming that on the day of occurrence when he along with his friend went to their fields they saw Balwinder Singh alias Binda climbing fencing of their haveli in a hurried manner and claimed that he assured that Balwinder Singh alias Binda has murdered his uncle Surjit Singh. After about two months i.e. on 9th of June, 2019 statement of one Pardeep Singh son of Onkar Singh was also recorded. He also claimed that on intervening night of 3rd/4th of April, 2019 i.e. the night of occurrence, at about 10.30 p.m. he saw Balwinder Singh alias Binda son of Sarwan Singh going in hurried manner from the passage near his haveli towards haveli of Surjit Singh. Police claims to have recorded confessional statement of Balwinder Singh alias Binda on 10th of April, 2019. Balwinder Singh alias Binda was booked in FIR and was put to trial. During the course of trial complainant Deepak Pathania appeared as PW-1 and suffered a statement claiming that Gandharv Singh the petitioner is a man of bad virtue. He was found in a compromising position in a mango orchid. He was scolded by his uncle Surjit Singh. Gandharv Singh at that time told his uncle Surjit Singh that he will have to face dire consequences

and thus he claimed that Balwinder Singh alias Binda and Gandharv Singh jointly committed murder of his uncle. Based upon the said testimony, application under Section 319 of the Code was moved for summoning Gandharv Singh as an additional accused. By way of impugned order, the same stands allowed and the petitioner has been summoned for facing trial as additional accused *qua* offence punishable under Section 302 IPC.

3. Assailing the order Mr. Mahajan submits that the same is in the teeth of law laid down by Constitution Bench in the case of **Hardeep Singh vs. State of Punjab and other, (2014) 3 SCC 92**. He submits that as per the settled law, the power vested under Section 319 of the Code has to be used rarely and with great caution. It is only when there is a strong and cogent evidence brought before the Trial Court against a person that such power has to be exercised that too after applying the '*test of more than prima facie case*'. He submits that merely on a bald statement of a witness attempting to create a wide net, exercise of power under Section 319 Cr.P.C. is uncalled for. It has been contended that for the first time the allegation against the petitioner has surfaced in statement of PW-1 who admittedly is not an eyewitness and even if his whole of the statement is taken to be true on its face value the same does not satisfy the test of '*more than prima facie case*' as prescribed in Hardeep Singh's case (*supra*).

4. Per contra, Mr. Manhas counsel for the respondent/complainant however submits that there are allegations levelled against the petitioner in a statement recorded in the Court. Mere fact that FIR did not mention his name cannot be a reason for ignoring specific oral statement given by the complainant before the Court and the Court did not make any mistake in exercising power under Section 319 of the Code once the role of the petitioner has come to the fore.

5. I have heard counsel for the parties and have carefully gone through records of the case.

6. In the present case complaint was registered on the information supplied by complainant Deepak Pathania alleging as under:

“xxx It is stated that I am resident of aforementioned address. I am 12th passed. My father has four brothers. The elder one is my father and younger to him is Balbir Singh, Gagan Singh and youngest is Surjit Singh. He is 55 years of age and has retired from Army. My father and other brothers are having land measuring 8 Acre outside the village where Haveli has been constructed in the field and has kept the animals also. My father and other brothers, used to go to sleep Dera in order to keep supervision. My uncle Surjit Singh (Chacha) who is having two sons namely Gulshan Singh and Rahul Singh, both are working in Army. Yesterday on 3.4.2019, time was around 9.30 pm after having dinner, he had gone to Haveli for sleeping on his motor cycle. Today on 4.4.2019, time was around 6.45 am, I along with my friend Rajiv Pathwal @ Rocky son of Chanan Singh, resident of Deh went to Dera for sowing the crop of lady finger. Gate of Haveli was locked from inside. I along with my friend went inside after crossing the wire and saw that my uncle Surjit Singh

was sleeping on bench in the varandha. He fell down from bench and his both legs and right hand was tied with rope and blood was coming from his mouth. He had already died. Regarding this, I had informed my wife Shallu on phone. Then my father Soram Singh, other family members and other people from village came at spot. On the intervening night 3.4.2019, my uncle Surjit Singh son of Gian Singh has been murdered with unknown person. But, no specific injury was seen on his body. I left my uncle Gagan Singh and other family members near the dead body and was going to police station along with my father for giving information and you have mete me. Legal action be taken. xxx”

7. After 5 days he suffered supplementary statement accusing Balwinder Singh alias Binda of the murder. During the course of investigation neither any witness of the prosecution ever named the petitioner nor the investigating agency found any incriminating evidence against him. Counsel appearing for the respondent also does not dispute the fact that for the first time the allegation against the petitioner surfaced in the testimony of complainant PW1. The question thus is *‘whether bald allegation levelled against the petitioner can satisfy the ‘test of more than prima facie case’ as prescribed under the Hardeep Singh’s case (supra)?*

8. Constitution Bench in Hardeep Singh’s case (supra) observed as under:

“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. Admittedly, the complainant who appeared as PW1 is not an eyewitness. The statement suffered by him before the Court is also nothing more than suspicion. The suspicion expressed by him cannot partake status of strong and cogent evidence to form basis for exercising discretionary and extraordinary power under Section 319 of the Code.

10. In view of above, this Court finds that the bald statement made by PW-1 falls short of more than *prima facie* case against the

petitioner and thus was not enough for the Trial Court to summon the petitioner as additional accused.

11. Counsel for the respondent/complainant agrees that at this stage apart from the said statement made by PW-1 there is no other evidence against the petitioner.

12. Resultantly, the present revision petition is allowed. Impugned order dated 26th of July, 2021 whereby the petitioner has been summoned to face trial in FIR No.22 dated 4th of April, 2019 registered for the offence punishable under Section 302 IPC, at Police Station Shahpur Kandi, Pathankot, as additional accused is ordered to be quashed.

February 12, 2024		(Pankaj Jain)
Dpr		Judge
	Whether speaking/reasoned :	Yes/No
	Whether reportable :	Yes/No