

S. No.111

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.652 of 2024 (O&M)

Date of Decision:04.04.2024

Manpreet Kaur

.....Petitioner

Vs.

The State of Punjab

.....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Madan Sandhu, Advocate for the petitioner.

DEEPAK GUPTA, J.

CRM No.14543 of 2024

This is an application under Section 482 Cr.P.C under Section 5 of the Limitation to condone the delay of 74 days in filing the revision.

2. For the reasons as mentioned in the application, the same is allowed. Delay of 74 days in filing the revision is hereby condoned.

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3. By way of this revision, petitioner has assailed order dated 20.10.2023, passed by learned Sessions Judge, Kapurthala, whereby an application under Section 319 Cr.P.C., for summoning Kuldeep Kaur @ Deepo and Joginder Singh @ Gindi as additional accused to face trial in case FIR No.127 dated 07.06.2022 registered at Police Station City District Kapurthala under Section 302 IPC, 120-B IPC, was dismissed.

4. FIR was registered on the statement of complainant- Bala Singh Dhaliwal, as per which one of his daughter, namely, Balwinder Kaur was married to Manjit Singh (accused) in 2018. Two sons were born out of this wedlock. The younger son was born on 01.06.2022 at Civil Hospital,

Kapurthala. It was stated by the complainant that on 04.06.2022, one video went viral on the social media from which he came to know that his daughter Balwinder Kaur had been killed by her husband Manjit Singh by strangulating her neck. It was alleged by the complainant that murder was committed at the instance of Deepo (mother of accused Manjit Singh) and Joginder Singh alias Gindi, paternal uncle of Manjit Singh. As per him, Joginder Singh used to reside at the house of Manjit.

5. After conducting necessary investigation, challan was filed only against Manjit Singh son of Mohinder Singh, i.e. husband of the deceased. Smt. Deepo and Joginder Singh were not even kept in column No.2 of the challan. The challaned accused Manjit Singh was charge-sheeted by the Court under Section 302 IPC. During trial, Manpreet Kaur, sister of deceased Balwinder Kaur appeared in the witness box as PW1. Her examination-in-chief was recorded and thereafter, application under Section 319 Cr.P.C was moved by the prosecution so as to summon Smt. Deepo and Joginder Singh, which has been dismissed by way of the impugned order.

6. Learned counsel contends that during her statement, PW1 has disclosed the specific role and attribution besides motive for commission of the crime by the proposed accused Kuldeep Kaur @ Deepo and Joginder Singh alias Gindi and so, the application has been wrongly dismissed, without giving cogent reasons.

7. I have considered the submissions of learned counsel for the petitioner and have perused the paper book.

8. The issue regarding the scope and extent of power of the court to arraign any person as an accused during the course of inquiry or trial in exercise

of the power under section 319 Cr.P.C. has been set at rest by a Constitutional Bench of Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab, 2014 (1) R.C.R.(Criminal) 623** followed by another pronouncement in **Babubhai Bhimabhai Bokhiria and Another Vs. State of Gujarat and others, 2014 (2) RCR (Criminal) (SC) 915.**

9. After reviewing various precedents, Hon'ble Apex Court summarized the legal position in **Hardeep Singh's case (cited supra)** in the following words:

"Power under Section 319 Cr.P.C. is a discretionary and an extraordinary 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. 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."

10. After referring to aforesaid authority of Constitutional Bench, Hon'ble Supreme Court held in Babubhai Bhimabhai Bokhiria's case (cited supra) as under:

"Section 319 of the Code confers power on the trial court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of prima facie case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher."

11. Keeping in view the legal position as above, it is noticed that FIR was

lodged on the complaint of Bala Singh Dhaliwal, the father of the deceased, who had come to know about the murder of his daughter – Balwinder Kaur, only when a video went viral on the social media. Meaning thereby, he was not present at the time of occurrence. In the FIR, he simply stated that murder was committed by Manjit Singh at the instance of Deepo and Joginder alias Gindi.

12. The impugned order also records that during investigation, statement of Manpreet Kaur, the sister of the deceased was recorded under Section 161 Cr.P.C., in which she had levelled allegations only against Manjit Singh.

13. During trial, the statement of PW1 – Manpreet Kaur was recorded on 04.07.2023, (Annexure P.2), which reads as under:-

“PW-01 Statement of Ms. Manpreet Kaur wife of Sh. Surjinder Singh, aged about 30 years, Housewife, resident of village Boparai, Police Station Bholath, district Kapurthala, ON SA.

*Stated that I am resident of above said address. The marriage of my sister Balwinder Kaur was solemnized with Manjit Singh (accused) in the year 2018. After the marriage Manjit Singh, his mother Deepo and his paternal uncle (Taya) started harassing Balwinder Kaur for not bringing Bullet Motorcycle in dowry. On this I alongwith my husband went to the house of Manjit Singh to make them understand regarding the above said issue but Manjit Singh and others paid deaf ear to our advise. I had been talking to my sister on phone frequently. On 1st June, 2022 my sister Balwinder Kaur gave birth to baby boy at Civil Hospital Kapurthala. Regarding this my sister gave me a call on 3.6.2022 and requested me to see her baby boy. On this I went to see my sister on 4.6.2022 at Civil Hospital Kapurthala. **When I went to Civil Hospital there I saw the room of my sister was bolted from inside and noises were coming from there. At the back of the room there was window glass and from there I saw accused Manjit Singh was pressing the face/ neck of my sister with the pillow. On seeing this I got scared and left the place.** Due to this I remained under shock for 10/12 days and could not narrate the incident to anyone. After that my brother came to my house and I narrated the above incident to him. Then I moved the complaint to the police on 22.6.2022 and the same is Ex.P1/PW1 and I identify my signature at point A. I also got recorded my statement to the police Ex.P2/PW1. My sister was killed by my brother-in-law Manjit Singh on account*

of not bringing the Bullet motorcycle. I identify the accused Manjit Singh through video-conferencing.

At this stage learned PP for the State requested that she wants to move an application under Section 319 Cr.P.C, as such case may be adjourned. Request heard and allowed.”

14. As is evident from the afore-said testimony of Manpreet Kaur, she claimed to be the eye witness of the occurrence and as per her testimony, it is only accused Manjit Singh, who was found to be pressing the face/ neck of deceased – Balwinder Kaur with a pillow. Even the presence of the proposed accused is not shown in her testimony. The only attribution to the proposed accused is that they used to harass the deceased along with Manjit Singh for not bringing the bullet motor-cycle. The Police after investigation, has not found the proposed accused to be the culprits. They were not even put in the column No.2 of the challan as noticed by the learned Sessions Judge, Kapurthala. Thus, there is no such material on record to satisfy the test of more than prima facie case as is 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 is required to refrain from exercising power under Section 319 Cr.P.C.
15. For all the reasons as discussed above, particularly the statement of PW1 - Manpreet Kaur, made during trial, this Court does not find any reason to interfere in the well-reasoned order passed by learned Sessions Judge, Kapurthala, whereby the application under Section 319 Cr.P.C has been dismissed.

Dismissed.

April 04, 2024
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No