

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

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2024:PHHC:061419
CRR-881-2024
Date of decision: May 3rd, 2024

Mandeep Singh
.....Petitioner

Versus

State of Punjab and others
.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Ms. Eknour Kaur Sara
and Mr. Pratap Singh Gill, Advocates
for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner is impugning the order dated 20.03.2024 vide which an application moved by him for summoning private respondents Nagar Singh and Gurjant Singh as additional accused to face trial in FIR No.44 dated 14.05.2023 under Section 302 of the IPC registered at Police Station Badali Ala Singh, was dismissed.

2. As per allegations levelled in the FIR, which has been annexed as Annexure P-1, it emerges that deceased-Jaswant Singh, who was father of the petitioner-complainant, was residing with the latter. There existed a long standing dispute between the petitioner-complainant and the deceased on one side and the private respondents i.e. his brother and his sons on the other side, who had allegedly been plotting for years to get the land of the deceased transferred in their names. Consequently, they harboured animosity towards the deceased. Even in the year 2008, an incident had taken place, wherein his nephew Baljit Singh had inflicted injuries upon the deceased. However, the matter was settled with the intervention of family members.

3. Learned counsel for the petitioner has while drawing the

attention of this Court to the testimonies of PW-1 Jatinder Singh, (brother of the complainant) and PW-2 Mandeep Singh (petitioner-complainant) has submitted that a perusal of the same makes it evident that the private respondents were complicit in the murder of the deceased. The occurrence in question took place on 14.05.2023 at around 7/8:00 AM, while deceased was on his fields gathering fodder. Learned counsel has asserted that the trial Court, while passing the impugned order, failed to take into account and appreciate that there were categoric allegations regarding the involvement of the private respondents in the crime in question, and their involvement had been spelt out by the complainant at the outset while lodging the FIR in question, as well. Learned counsel has still further contended that the trial Court while passing the impugned order also turned a blind eye to the strained relations between the parties and their long standing conspiracy to eliminate the deceased. She has further asserted that while lodging the FIR and outlining the allegations, the complainant had also referred to the frequent disputes, which the private respondents as well as the already challaned accused Baljit Singh had with the deceased regarding the distribution of shares of land. It has lastly been asserted that as many as 12 injuries were found on the person of the deceased, which could not have been inflicted by only one person.

4. I have heard learned counsel for the petitioner and perused the relevant material on record.

5. As per the settled ratio of law in *Hardeep Singh Versus State of Punjab 2014 (3) SCC 92*, the powers under Section 319 of the Cr.P.C. for summoning any person, not originally challaned or named as an accused, to the proceedings, can be done only if it appears from

the evidence that he or she has committed the offence alleged. However, this power under Section 319 of the Cr.P.C. has to be exercised by the Court sparingly and only when circumstances of the case demand and not philanthropically.

6. It thus is abundantly clear that the powers under Section 319 of the Cr.P.C. cannot be used simply because the prosecution/complainant believes that someone else might also be guilty of the offence. Rather, it should be based on strong and cogent evidence presented before the Court. The evidence collected by the investigating agency subsequent to the lodging of an FIR should establish more than just a *prima facie* case, meaning it should be stronger than a probability of a person's involvement but not reaching the level of certainty required for conviction.

7. Importantly, a Court should refrain from exercising powers under Section 319 of the Cr.P.C. if it is not satisfied that the evidence, if unrebutted, would lead to the conviction of the person, who is being sought to be summoned as an additional accused under Section 319 of the Cr.P.C. The object and purpose behind Section 319 of the Cr.P.C. is to allow the inclusion of a person as an additional accused during trial but it definitely does not authorize the Court to form an opinion on the guilt of the accused. Therefore, while deciding an application under Section 319 of the Cr.P.C., the role of the Court is limited to consider whether there is sufficient evidence to try the person sought to be summoned as an additional accused together with other accused, who already stand challaned, and not to determine their guilt.

8. The law pertaining to the summoning of an additional accused under Section 319 of the Cr.P.C. already stands articulated by

Hon'ble the Supreme Court in *Hardeep Singh's case (supra)*, wherein Hon'ble the Supreme Court while discussing the powers of a Court under Section 319 of the Cr.P.C. has laid down the following parameters to be taken into account while summoning a person as an additional accused under Section 319 Cr.P.C.:-

“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.*

Q.(v) In what situations can the power under this section be exercised: Not named in FIR; Named in the FIR but not charge-sheeted or has been discharged?”

9. In the present case, except for the statements made by PW-1 Jatinder Singh and PW-2 Mandeep Singh raising suspicion qua the involvement of the private respondents in the murder of the

deceased, there is no evidence on record to connect them with the crime in question. On a pointed query put to the learned counsel if there was any witness of last seen or any recovery of weapon of offence or even if there was any statement under Section 161 of the Cr.P.C. of the complainant or any other witness qua the alleged involvement of the private respondents, she replied in the negative but she reiterated that in view of the strained relations, it could be clearly inferred and there was a strong suspicion that the private respondent were conspirators to the crime in question. It may be worthwhile to observe that while the principle of strong suspicion might guide the framing of charges, however, summoning a person as an additional accused under Section 319 of the Cr.P.C. requires a distinct legal approach; summoning under Section 319 of the Cr.P.C. entails evaluation of newly presented evidence in Court, rather than merely basing a decision on the existing suspicions of the complainant. Admittedly, after the registration of the FIR in question, the investigating agency investigated into the role of both of these private respondents and they were thus, rightly exonerated by the investigating agency and not challaned along with accused Baljit Singh. Therefore, in the light of the settled ratio of law in *Hardeep Singh's case (supra)*, there is a glaring lack of any compelling evidence to connect both these private respondents with the murder in question.

10. The instant petition stands dismissed.

11. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

May 3rd, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes