

CRR-1270-2023 (O&M)
Date of decision: 23.01.2024

...PETITIONER

...RESPONDENTS

"7.8 Considering the law laid down by this Court in the case of Hardeep Singh (supra) and the observations and findings referred to and reproduced hereinabove, it emerges that (i) the Court can exercise the power under section 319 of the CrPC, 1973 even on the basis of the statement made in the examination-in-chief of the witness

concerned and the Court need not wait till the cross-examination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) 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 of the CrPC, 1973 provided from the evidence (may be on the basis of the evidence collected in the form of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial.

7.9 In the case of *S. Mohammed Ispahani v. Yogendra Chandak*, 2017(4) RCR (Criminal) 650: (2017) 16 SCC 226 in para 35, this Court has observed and held as under:

"35. It needs to be highlighted that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the charge-sheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the charge-sheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet. Once that stage has gone, the Court is still not powerless by virtue of section 319 CrPC, 1973. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused.

8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that, in the facts and circumstances of the case, neither the learned Trial Court nor the High Court have committed any error in summoning the appellants herein to face the trial along with other co-accused. As observed hereinabove, the appellants herein were also named in the FIR. However, they were not shown as accused in the challan/charge-sheet. As observed hereinabove, nothing is on record whether at any point of time the complainant was given an opportunity to submit the protest application against non-filing of the charge-sheet against the appellants. In the deposition before the court, P.W.1 and P.W.2 have specifically stated against the appellants herein and the specific role is attributed to the accused-appellants herein. Thus, the statement of P.W.1 and P.W.2 before the Court can be said to be "evidence" during the trial and, therefore, on the basis of the same and as held by this Court in the case of *Hardeep Singh (supra)*, the persons against whom no charge-sheet is filed can be summoned to face the trial. Therefore,

we are of the opinion that no error has been committed by the Courts below to summon the appellants herein to face the trial in exercise of power under section 319 of the CrPC, 1973."

Learned counsel for the petitioner has further placed reliance upon the judgment of Hon'ble Allahabad High Court in case titled as Upendra @ Mohit Versus State of UP and another, 2021(10) ILR (Allahabad) 640. The relevant paras whereof read as under:-

15. The broad principles which have been laid down for exercise of powers under Section 319 of the Code underline the object of the enactment that the real perpetrator of the offence should not get away unpunished and in a situation where the investigating agency for any reason does not array any culprit as an accused the court would not be powerless in calling the accused to face trial; rather it would be duty of the court to do justice by punishing the real culprit.

18. Section 319 (1) of the Code envisages 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.

21. The power under Section 319 of the Code to summon even those persons who are not named in the charge-sheet to appear and face trial, being unquestionable and the object of the provision being not to allow a person who deserves to be tried to go scot-free by being not arraigned in the trial inspite of possibility of his complicity which can be gathered from the evidence during the course of trial, the order passed under Section 319 of the Code summoning the revisionist does not contain any material error so as to warrant inference."

Learned counsel for the petitioner has further placed reliance upon the judgment of Hon'ble Allahabad High Court in case titled as Punit Yadav Versus State of U.P. and another, 2021(9) ADJ 141. The relevant paras whereof read as under:-

35. In Manjeet Singh (Supra), Court was considering the correctness of an order passed by High Court dismissing the revision preferred against an order passed by Sessions Judge allowing the application under Section 319 Cr.P.C., 1973 filed in a case under Sections 363,

366, 376 IPC and Sections 3/4 Protection of Children From Sexual Offences, (POCSO) Act, 2012 Court again examined the issue relating to parameters for exercise of jurisdiction under section 319 Cr.P.C., 1973 Court took notice of the constitution Bench judgement in Hardeep Singh (Supra) and S. Mohammed Ispahani (Supra) and on basis of ratio laid down therein evolved the ambit and scope of powers of Court under section 319 Cr.P.C., 1973 in paragraphs 34 of judgement. Having done so, Court examined the testimony of P.W.1 Manjeet who is an injured witness and on basis thereof tested the veracity of orders passed by High Court as well as trial court whereby summoning of non charge sheeted accused was declined. Court upon evaluation of evidence on record disagreed with the view taken by High Court as well as trial court. Following disagreement was expressed by court in paragraphs 34, 35, 36, 37 and 38 of the judgement:

"34. The ratio of the aforesaid decisions on the scope and ambit of the powers of the Court under section 319 CrPC, 1973 can be summarized as under:

(i) That while exercising the powers under section 319 CrPC, 1973 and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;

(ii) for the empowerment of the courts to ensure that the criminal administration of justice works properly;

(iii) the law has been properly codified and modified by the legislature under the CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;

(iv) to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;

(v) where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial;

(vi) section 319 CrPC, 1973 allows the court to proceed against any person who is not an accused in a case before it;

(vii) the court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency;

(viii) section 319 CrPC, 1973 is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also

having committed the offence under trial;

(ix) the power under section 319(1) CrPC, 1973 can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pre- trial stage intended to put the process into motion;

(x) the court can exercise the power under section 319 CrPC, 1973 only after the trial proceeds and commences with the recording of the evidence;

(xi) the word "evidence" in section 319 CrPC, 1973 means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents;

(xii) it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under section 319 CrPC, 1973 is to be exercised and not on the basis of material collected during the investigation.

(xiii) if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under section 319 CrPC, 1973 and can proceed against such other person(s);

(xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under section 319 CrPC, 1973 can be exercised;

(xv) that power under section 319 CrPC, 1973 can be exercised even at the stage of completion of examination-in-chief and the court need not has to wait till the said evidence is tested on cross-examination;

(xvi) even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of section 319 CrPC, 1973 and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses);

(xvii) while exercising the powers under section 319 CrPC, 1973 the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.

35. Applying the law laid down in the aforesaid decisions to the facts of the case on hand we are of the opinion that the

Learned trial Court as well as the High Court have materially erred in dismissing the application under section 319 CrPC, 1973 and refusing to summon the private respondents herein to face the trial in exercising the powers under section 319 CrPC, 1973. It is required to be noted that in the FIR No. 477 all the private respondents herein who are sought to be arraigned as additional accused were specifically named with specific role attributed to them. It is specifically mentioned that while they were returning back, Mahendra XUV bearing no. HR-40A-4352 was standing on the road which belongs to Sartaj Singh and Sukhpal. Tejpal, Parab Saran Singh, Preet Samrat and Sartaj were standing. Parab Sharan was having lathi in his hand, Tejpal was having a gandsi, Sukhpal was having a danda, Sartaj was having a revolver and Preet Singh was sitting in the jeep. It is specifically mentioned in the FIR that all the aforesaid persons with common intention parked the Mahendra XUV HR-40A-4352 in a manner which blocks the entire road and they were armed with the weapons. Despite the above specific allegations, when the charge-sheet/final report came to be filed only two persons came to be charge-sheeted and the private respondents herein though named in the FIR were put/kept in column no. 2. It is the case on behalf of the private respondents herein that four different DSPs inquired into the matter and thereafter when no evidence was found against them the private respondents herein were put in column no. 2 and therefore the same is to be given much weightage rather than considering/believing the examination-in-chief of the appellant herein. Heavy reliance is placed on the case of Brijendra Singh (Supra). However none of DSPs and/or their reports, if any, are part of the charge-sheet. None of the DSPs are shown as witnesses. None of the DSPs are Investigating Officer. Even on considering the final report/charge-sheet as a whole there does not appear to be any consideration on the specific allegations qua the accused the private respondents herein who are kept in column no. 2. Entire discussion in the charge-sheet/final report is against Sartaj Singh only.

36. So far as the private respondents are concerned only thing which is stated is "During the investigation of the present case, Shri Baljinder Singh, HPS, DSP Assandh and Shri Kushalpal, HPS, DSP Indri found accused Tejpal Singh, Sukhpal Singh, sons of Gurdev Singh, Parab Sharan Singh and Preet Samrat Singh sons of Mohan Sarup Singh caste Jat

Sikh, residents of Bandrala innocent and accordingly Sections 148, 149 and 341 of the IPC were deleted in the case and they were kept in column no. 2, whereas challan against accused Sartaj has been presented in the Court."

37. Now thereafter when in the examination-in-chief the appellant herein-victim- injured eye witness has specifically named the private respondents herein with specific role attributed to them, the Learned trial Court as well as the High Court ought to have summoned the private respondents herein to face the trial. At this stage it is required to be noted that so far as the appellant herein is concerned he is an injured eye-witness. As observed by this Court in the cases of **State of MP v. Mansingh(2003) 10 SCC 414 (para 9)**; **Abdul Sayeed v. State of MP (2010) 10 SCC 259**; **State of Uttar Pradesh v. Naresh (2011) 4 SCC 324**, the evidence of an injured eye witness has greater evidential value and unless compelling reasons exist, their statements are not to be discarded lightly. As observed hereinabove while exercising the powers under section 319 CrPC, 1973 the Court has not to wait till the cross-examination and on the basis of the examination-in-chief of a witness if a case is made out, a person can be summoned to face the trial under section 319 CrPC, 1973.

38. Now so far as the reasoning given by the High Court while dismissing the revision application and confirming the order passed by the Learned trial Court dismissing the application under section 319 CrPC, 1973 is concerned, the High Court itself has observed that PW1 Manjeet Singh is the injured witness and therefore his presence cannot be doubted as he has received fire arm injuries along with the deceased. However, thereafter the High Court has observed that the statement of Manjeet Singh indicates over implication and that no injury has been attributed to either of the respondents except they were armed with weapons and the concerned injuries are attributed only to Sartaj Singh even for the sake of arguments someone was present with Sartaj Singh it cannot be said that they had any common intention or there was meeting of mind or knew that Sartaj would be firing. The aforesaid reasonings are not sustainable at all. At the stage of exercising the powers under section 319 CrPC, 1973 the Court is not required to appreciate and/or enter on the merits of the allegations of the case. The High Court has lost sight of the fact that the allegations against all the accused persons right from the very beginning were for the offences under Sections 302, 307, 341, 148 & 149 IPC. The

High Court has failed to appreciate the fact that for attracting the offence under Section 149 IPC only forming part of unlawful assembly is sufficient and the individual role and/or overt act is immaterial. Therefore, the reasoning given by the High Court that no injury has been attributed to either of the respondents except that they were armed with weapons and therefore, they cannot be added as accused is unsustainable. The Learned trial Court and the High Court have failed to exercise the jurisdiction and/or powers while exercising the powers under section 319 CrPC, 1973.

38. The ambit and scope of powers under Section 319 Cr.P.C., 1973 now stands crystalized by Supreme Court in paragraph- 34 of the judgement in Manjeet Singh (supra).

39. The summoning of a non charge-sheeted accused in exercise of power under Section 319 Cr.P.C., 1973 cannot be done in a "casual and cavalier manner". Power under Section 319 Cr.P.C., 1973 is "an extraordinary discretionary power which should be exercised sparingly". Vide paragraphs- 34 and 36 of the judgement in S. Mohammed Ispahani (supra) and paragraph- 105 of the Constitution Bench judgement in Hardeep Singh (supra).

40. The nature of evidence required for summoning a non charge-sheeted accused to face trial, has been summarized in paragraph- 106 of the Constitution Bench judgement in Hardeep Singh (supra) wherein Constitution Bench has held that a prospective accused can be summoned on the basis of Statement-in-Chief of prosecution witness of fact. The only requirement is that such statement discloses 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. The second test laid down therein is that such person could be tried with other accused. In paragraph- 36 of the judgement in S. Mohammed Ispahani (supra) Court held that a non charge sheeted accused can be summoned only on the basis of "strong and cogent evidence."

Learned counsel for the petitioner has further placed reliance upon the judgment of Hon'ble Karnataka High Court in case titled as Lalita Versus State of Karnataka and another, 2022 (1) KCCR 652. The relevant paras whereof read as under:-

7. Having heard the learned counsel appearing for the respective parties, it is not in dispute that when the material emerges during the course of examination of witnesses by the prosecution, the Court can summon additional accused invoking section 319 of Cr.P.C., 1973. It is also settled law in view of the judgment of the Hon'ble Apex Court in Hardeep Singh's case *supra* as well as judgment of the Hon'ble Apex Court in the case of Rajesh and Ors., v. State of Haryana reported in 2019 SAR (Criminal) 714 wherein it is held that summoning a person as additional accused, the Court can summon a person as additional accused even on basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till cross-examination of such a witness. Further, observed that when the appellants were named in the FIR but were not named in charge-sheet and nothing on record to show that complainant was given an opportunity to submit the protest application against non filing of the charge sheet against the appellants. Depositions of PW.1 and PW.2 before Court attribute specific role of appellants in the commission of the offence and observed that no error in summoning the appellants to face trial as additional accused on basis of statements of witnesses.

8. Hence, it is clear that additional accused can be summoned who being the accused in the FIR but was dropped in the charge-sheet if the complainant witnesses depose before the Court. Now the question before this Court is whether the complainant can approach the revisional jurisdiction when application filed by the prosecution under Section 319 of Cr.P.C., is dismissed by the Trial Court. The Hon'ble Apex Court in the case of Manjeet Singh's case *supra* in detail discussed with regard to an application filed by the counter part invoking section 319 of Cr.P.C., 1973. The main contention of the learned counsel for the petitioner is that in the said case the complainant had filed an application under section 319 of Cr.P.C., 1973 before the Trial Court and the same was rejected and hence, approached the High Court and the High Court also confirmed the same. The complainant himself had approached the Hon'ble Apex Court and challenged the order. In the case on hand, no doubt, application under section 319 of Cr.P.C., 1973 is filed by the prosecution i.e., by the State and not by the complainant. Admittedly, the revision petitioner before the trial Court is defacto complainant. Hence, it is appropriate to consider the meaning of the 'victim' which is defined under Section 2(wa) of Cr.P.C., the 'victim' means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression 'victim' includes his or her guardian or legal heir. The definition is elaborate within the expression victim includes his or her guardian or legal heir.

Point No.2 :

15. I have considered the factual aspects of the case. Based on the complaint dated 15.02.2012 FIR was registered wherein husband is arrayed as accused No.1 and it is also mentioned 'with three persons'. On perusal of the complaint, in second page of the complaint specific allegations are made against the petitioners stating that on 14.02.2012 at about 8.30 a.m., when she was in the bus stand to go to Afzalpur to attend duty her husband, father-in-law, mother-in-law and sister-in-law came to the bus stand and abused her in filthy language and assaulted her and if really not in need of divorce, she should get an amount of Rs.10,00,000/- and also threatened her life. But it is the contention of the learned counsel for the petitioners that the very complainant has made further statement before the police stating that by mistake she mentioned the name of mother-in-law as well as sister-in-law. The said further statement is disputed by the complainant before the Court stating that she has not given any such further statement before the Investigating Officer. The trial Court has recorded the evidence of Pws.1 and 2 wherein P.W.1 categorically stated about the allegation made in the complaint and also in page No.5 she has categorically stated that she has not given any further statement before the police and also stated that her mother-in-law and sister-in-law are not before the Court and requested to add those two accused persons. The prosecution has also examined PW.2. Both PWs.1 and 2 have deposed regarding the role of these petitioners and particularly about the incident which has been narrated in the complaint that at around 8.30 a.m., on 14.02.2012 all the accused came, abused her in filthy language and subjected her for assault and caused life threat. On perusal of the order of the revisional Court also, in paragraphs-8 and 9 the revisional Court extracted the evidence of PWs.1 and 2 and taken note of the contents of the complaint as well as evidence of PWs.1 and 2 and allowed the application under section 319 of Cr.P.C., 1973 Having perused the order of the learned Magistrate, while rejecting the application the learned Magistrate has observed that these petitioners have been arrayed as accused Nos.3 and 4 in the FIR, but the Investigating Officer after investigation has filed charge-sheet stating that at the time of alleged incident accused Nos.3 and 4 were not present as per the further statement and hence, the Investigating Officer had left out them in the charge-sheet as no material to file charge-sheet against them. The learned Magistrate has also observed that there is no probable reason to believe that these petitioners demanded any dowry and harassed the complainant and if really accused Nos.3 and 4 had involved in the alleged offences certainly the complainant could have filed objections at the initial stage itself. The reasoning given by the

Trial Court is not sustainable for the reason that though the Investigating Officer has stated that the complainant appeared and given further statement that accused Nos. 3 and 4 were not there at the time of alleged incident, the said further statement of the complainant is disputed by the complainant and reiterated before the Court when she was examined before the Trial Court that she has not given such statement and the trial Court not discussed about the same while rejecting the application filed under section 319 of Cr.P.C., 1973 The revisional Court reconsidered the material and extracted the evidence of PWs.1 and 2 and comes to the conclusion that specific allegations are made against the petitioners that these petitioners accompanied accused Nos. 1 and 2 and assaulted the complainant and the said allegations are found in the FIR as well as in the evidence of PWs.1 and 2. When such being the facts and circumstances of the case and when such being the material available on record, I do not find any error committed by the revisional Court in allowing the application filed under section 319 of Cr.P.C., 1973 The revisional Court has given reasons for setting aside the order of the learned Trial Judge and considering the material on record only allowed the application. This Court is also of the opinion that there are material to proceed against the petitioners. Hence, I do not find any force in the contention of the learned counsel for the petitioners that there is no material. The judgment relied upon by the learned counsel for the petitioners in Labhuji Amratji Thakor's case supra not come to the aid of the petitioners having considered the material on record on merits. No doubt, while exercising the power under section 319 of Cr.P.C., 1973 Court has to exercise the said power with due care and caution and not to exercise the said power in a routine course but the material available on record is clear that these petitioners abused and accompanied with accused Nos. 1 and 2 and subjected for assault and the same is not only narrated in the complaint and also reiterated in the evidence of complaint as well as the witnesses. The Hon'ble Apex Court in Manjeet Sinph's case held that the complainant can question the rejection of application filed under section 319 of Cr.P.C., 1973 Hence, I answer point No.2 in the negative."

Learned counsel for the petitioner has further placed reliance upon the judgment of Hon'ble Gauhati High Court in case titled as Nabab Ali Sk and others Versus The State of Assam, represented by the Public Prosecutor, Assam and others, 2021(5) GauLT 693. The relevant paras whereof read as under:-

taken the names of the petitioners along with the accused that the accused and the petitioners herein, have assaulted her for non-fulfilment of their dowry demand of Rs.2 Lacs, which statement of the P.W-9 appears to indicate a commission of an offence punishable under Section 498(A) of the IPC by the petitioners along with the accused. The statement made by the P.W-9 in her deposition is also supported by the FIR that the informant/victim had lodged before the Officer-in-Charge, Dhubri Police Station on 05.11.2015, wherein the P.W-9/respondent No.2 had made specific allegation against the petitioners along with the accused and other named persons.

19. The relevant consideration which the trial Court is to keep in mind at the time of exercising power under Section 319 Cr.P.C, 1973 as per the ratio of the decision laid down by the Hon'ble Supreme Court in Brijendra Singh (Supra) is that the evidence brought on record during the trial should appear to the trial Court that the person other than charge-sheeted have also committed the same offence or any other offence, who can be tried together along with the accused in the same case. At the time of exercising the discretionary power under section 319 of the Cr.P.C., 1973 it has further been provided that the learned trial Court can exercise the discretionary power under Section 319 Cr.P.C, 1973 even at the stage of completion of examination-in-chief and the Court need not wait till the said evidence is tested on cross-examination and also that, at that stage, the Court is not required and or justified in appreciating the deposition/evidence of the prosecution witnesses on merit, which is required to be done during the trial."

I have heard the learned counsel for the petitioner and have examined the judgments cited by the counsel for the petitioner. All the judgments relates to the powers of Court under Section 319 Cr.P.C. There is no denial to the fact that the Courts have wide powers under Section 319 Cr.P.C. The learned trial Court while deciding the application under Section 319 Cr.P.C has observed as under:-

"9. The learned Public Prosecutor assisted by the counsel for the complainant seeks to summon six persons as additional accused. Out of six persons, five persons were named in the FIR i.e. Baljeet son of Ujala, Vijay son of Ujala, Sunita wife of Baljeet, Rani wife of Vijay, Devender @ Kalu son of Baljeet and one other person Vikas, who is not named in the FIR but on the ground that his name is mentioned on the rukka as brought by Vikas (neighbour) but wrongly got mentioned his identity as neighbour on the said rukka while he is the son of Vijay, the brother-in-law of accused Sandeep.

10. The basis of the argument to summon the proposed additional accused is two fold i.e oral testimony of PW3 and the circumstantial evidence i.e. the length of ventilation window of the washroom wherein the deceased allegedly committed suicide as per challan. The contention is that the ventilation window is situated at such a height that the deceased could not reach there herself to tie the rope/nada as is evident from the crime scene visit FSL report as well as from the photographs. It is further argued that from these evidence, it could be easily make out that the deceased had not committed suicide rather she was murdered and the act of murder could not be done single hand by accused Sandeep but more than one person are involved to carry out the commission of the offence of murder in such manner.

During the course of argument, the prosecution fairly conceded that except oral testimony of PW3 and crime scene visit report Ex. PW2/1 and photographs on record, there is no other evidence either medical or direct evidence on record to summon the proposed persons as additional accused.

Now let us see whether circumstance of the case warrants summon to proposed additional accused-persons after appreciating the evidence come on record so far.

11. Firstly, the proposed accused namely Vikas is not named in the FIR and not found joined during investigation or not named in the charge sheet filed by the police. Even, he was not named in complaint Ex. PW3/1 wherein name of Kalu, nephew of accused Sandeep is specifically found mentioned along with other niece namely Goldy of accused Sandeep.

It cannot be presumed the person who brought the deceased in the hospital is involved in murder on the basis of rukka where his name is found mentioned. Certainly, he was required to be joined in the investigation by the police, but his non joining in investigation by the police, presumption cannot be made that he was involved in the commission of crime merely, finding his name in the rukka in the absence of any evidence. No strong and cogent evidence has come on record to summon (Vikas) as additional accused in trial till date.

12. So far the second set of the proposed five additional accused-persons whose names were found mentioned in the complaint and also specifically named in FIR but during investigation, their involvement were not found in committing the crime and they were found innocent. During the evidence of PW3. Dr. Sanjay Kumar,

nothing has surfaced to fulfill the requirement under Section 319 Cr.P.C to summon the second set of additional accused-persons. Except oral allegation, nothing new evidence has come in his testimony. The same allegations made in complaint was investigated during investigation and no substance was found against them.

13. The contention of learned counsel for the complainant mainly rests upon the difference between height of ventilation window of washroom and height of deceased + height of chair i.e. 2'-1" (8'10"-5'4" + 1'5") and it was not possible for deceased to hang herself. This contention does not have any substance. Logically, length of arm of deceased, if added in her height along with chair then possibility to hang herself gets much stronger and cannot be ruled out. Also as per crime scene visit report Ex.PW2/1, patri and tub lying in the washroom is also found mentioned and also visible in photographs. Patri is also found mentioned in scaled site plan Ex. PW1/1 at point-C.

Further, the learned counsel for the complainant has fairly conceded that from the medical evidence i.e PMR of deceased, does not indicate homicidal death. It is also worthwhile to mention that the doctor, who conducted post mortem examination of the deceased, is yet to be examined.

14. The further contention of learned Public Prosecutor that Investigating Officer had not mentioned sufficient reason not to charge sheet proposed accused, is not tenable, in view of Final report under Section 173 Cr.P.C. It is found mentioned in final report under Section 173 Cr.P.C that no evidence against such persons came on record. Also, the permission of Lie Detection of Rajbala @ Rani wife of Baljeet, Sunita wife of Vijay was granted by Court. No such report has been placed on record so far against the proposed additional accused-persons.

15. After hearing the contention of learned Public Prosecutor assisted by learned counsel for the complainant and perusing the record and in settled legal proposition, this court does not find any ground to summon the proposed additional accused to face trial along with Sandeep (husband of the deceased).

Hence, so far no new fact or evidence has come on record during trial to prima facie to satisfy the sine quo non for summoning above said persons as additional accused. It appears that the complainant had levelled allegations against the above said person just to wider the net. It is well settled proposition of law that an order under

Section 319 Cr.P.C. should not be passed only because first informant/complaint wishes to implicate some person other than the accused. The courts are required to apply the stringent tests one of the tests is that the court should come to the reasonable conclusion on the basis of evidence before it that the same is likely to lead to conviction. Thus, this court is of the considered opinion that no strong and cogent evidence has come on record to summon the proposed accused-persons as additional accused. Accordingly, the present application is dismissed.

16. However, it is made clear that the court has analyzed the material and evidence on record in view of witness examined so far only in relation to above-mentioned persons who were sought to be summoned as additional accused as well. The observations made are without prejudice to the case on merits qua the accused Sandeep facing trial."

A perusal of the above order shows that the learned Court below has taken into consideration every aspect of the case and passed the detailed order, which does not warrant any interference of this Court.

In view of the above facts and circumstances of the present case, this Court does not find any merit in the present revision petition and the same is dismissed.

All pending applications, if any, stands disposed of.

23.01.2024
renubala

(SUDEEPTI SHARMA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No