



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

1. CRR-1266-2022 (O&M)
Reserved on : 27.08.2024
Pronounced on : 09.09.2024

Om Prakash MakkarPetitioner

Versus

State of Haryana and anotherRespondents

2. CRR-1473-2022 (O&M)
Reserved on : 27.08.2024
Pronounced on : 09.09.2024

Vinod GoyalPetitioner

Versus

State of Haryana and anotherRespondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by : Mr. Harsh Aggarwal, Advocate
for the petitioner in CRR-1266-2022.

Mr. Paramjit Singh Jammu, Advocate
for the petitioner in CRR-1473-2022.

Mr. Gagandeep Singh Chhina, AAG, Haryana.

Mr. Tejas Bansal, Advocate and
Mr. Sanjiv Kumar Aggarwal, Advocate
for respondent No.2 in both the petitions.

MANJARI NEHRU KAUL, J.

1. This order shall dispose of abovementioned two petitions
as they both arise out of the same impugned order.

2. The petitioners are aggrieved by the order dated
22.03.2022 passed by learned Additional Sessions Judge, Sirsa,
wherein they have been summoned under Section 319 of the Cr.P.C. to



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face trial in case FIR No.26 dated 26.08.2016 under Section 306 of the IPC registered at Police Station GRP Sirsa, despite the police having previously declared them innocent.

3. Learned counsel for the petitioners argue that the FIR in question (Annexure P-1) was lodged under Section 306 of the IPC by the complainant (wife of the deceased), who alleged that petitioner Vinod Goyal had borrowed money from the deceased and had failed to return it, which greatly distressed the deceased. In addition, the complainant also alleged that petitioner Om Prakash had raised two bills qua a car purchased by the deceased from his car agency. The two bills had certain discrepancies which further distressed the deceased. It was on account of these actions by the petitioners, the deceased allegedly committed suicide.

4. Learned counsel for the petitioners have vehemently argued that the petitioners have been implicated in the present case based on vague and generalized allegations; the allegations are neither interconnected nor part of the same transaction, nor are they proximate in time to the date of the suicide of the deceased i.e. 25.08.2016. It has been further asserted that the FIR does not allege any conspiracy between the petitioners; rather, isolated incidents have been taken out of context to unjustly invoke the provisions of Section 306 of the IPC against them. Learned counsel further contend that during investigation, the petitioners were declared innocent, and a charge sheet was filed only against three other accused; the complainant although reiterated the same allegations during her examination in chief before the learned



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Trial Court, however, no evidence to show the complicity of the petitioners in the crime in question came to the fore. The learned Trial Court, thus, erroneously allowed the application under Section 319 of the Cr.P.C. moved by the prosecution and summoned the petitioners to face trial.

5. It has been still further argued by the learned counsel that even if the entire case of the prosecution, including the FIR, the suicide note left by the deceased, and the testimony of the complainant, before the learned Trial Court, is accepted as true, even then no case is made out against the petitioners because the essential ingredients required to constitute an offence under Section 306 of the IPC are clearly missing. It has been further argued that during his lifetime, the deceased had filed an FIR against petitioner Om Prakash under Section 420 of the IPC, which was found to be baseless and subsequently cancelled by the police. Learned counsel have emphasized that mere existence of financial transactions and the non-return of money cannot be construed as abetment to suicide, by the petitioners. Still further, it has been contended that there is no allegation in the FIR that the petitioners pushed the deceased to such an extent that he had no choice but to take his own life. In support of this arguments, learned counsel have placed reliance upon *M. Mohan Vs. State Tr. Dy. Supdt. of Police : (2011) 3 SCC 626*.

6. Additionally, the learned counsel have submitted that the impugned order runs contrary to the parameters laid down by the Constitution Bench of Hon'ble the Supreme Court in *Hardeep Singh*



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Vs. State of Punjab, (Constitution Bench) : 2014(3) SCC 92. Learned counsel have, thus, argued that in the light of the above ratio of law summoning an additional accused under Section 319 of the Cr.P.C. requires strong and cogent evidence, beyond mere prima facie satisfaction, as is required for issuing a process against the accused generally. The standard of proof required for invoking the provisions of Section 319 of the Cr.P.C. is much higher, and the prosecution, as per the learned counsel, has not met this standard. Therefore, a prayer has been made for setting aside the impugned order vide which the petitioners have been summoned as additional accused under Section 319 of the Cr.P.C., to face trial.

7. Per contra, learned counsel for the complainant while opposing the prayer and submissions made by the counsel opposite, has argued that the learned Trial Court rightly summoned the petitioners under Section 319 of the Cr.P.C. to face trial, as a Court is empowered to summon any accused/individual even if he has been declared innocent during investigation; rather the investigation carried out by the investigating agency in the instant case was shoddy. It has been further argued that the learned Trial Court correctly noticed that the petitioners had been named at the outset in the suicide note by the deceased, and the FIR filed by the complainant. The failure of petitioner Vinod Goyal to return the money, borrowed by him, to the deceased, naturally caused significant financial stress to the deceased, ultimately leading to his suicide. Furthermore, learned counsel has contended that the complainant, while testifying before the learned Trial Court, supported



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the allegations in the FIR against the petitioners. Learned counsel has still further vehemently argued that although there is no specific allegation that the petitioners conspired to instigate the deceased to commit suicide, however, there can be no manner of doubt that the sequence of events cumulatively pushed the deceased into a state of despair. Learned counsel has still further argued that the prosecution is not required to prove at this stage of summoning under Section 319 of the Cr.P.C. that the conviction of the petitioners is guaranteed; only a prima facie case needs to be established, which has been done adequately through the evidence presented before the learned Trial Court.

8. I have heard learned counsel for the parties and perused the relevant material on record.

9. Before proceeding further, it would be apposite to reproduce Section 319 of the Cr.P.C. which reads as under:-

“319. Power to proceed against other persons appearing to be guilty of offence.

(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.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then-



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(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

10. A close reading of the above reproduced provisions show that the Court is empowered to summon any person, who appears, on the basis of evidence led, to have committed an offence, even if that person was not initially accused or was declared innocent by the police during investigation. The purpose of Section 319 of the Cr.P.C. is to ensure that no one who appears prima facie guilty escapes legal consequences.

11. The power to summon an additional accused under Section 319 of the Cr.P.C. is discretionary and extraordinary, to be exercised sparingly, and only in cases where the circumstances so warrant. It is not sufficient for a Court to summon a person under Section 319 of the Cr.P.C. merely on suspicion that he may also be guilty; there must be strong and cogent evidence that justifies the summoning of that person as an additional accused. This power under Section 319 of the Cr.P.C. must be invoked only when more than a prima facie case is made out, as laid down by Hon'ble the Supreme Court in ***Hardeep Singh's case*** (*supra*) in the following terms :-

“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



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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 unrebutted, 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."

12. Adverting to the present case, the petitioners have been implicated in the FIR lodged under Section 306 read with Section 34 of the IPC, with allegations that they were responsible for the suicide of the deceased. To contextualize, Section 306 of the IPC deals with 'abetment of suicide', while Section 107 of the IPC defines 'abetment'. For ready reference, Section 107 and 306 of the IPC are reproduced as under:-

“Section 107:- Abetment of a thing

A person abets the doing of a thing, who—

First.—Instigates any person to do that thing; or

Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.—Intentionally aids, by any act or illegal



omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

306. Abetment of suicide.—

If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

13. For an offence under Section 306 of the IPC to be proved, there must be clear instigation by the accused that directly leads the victim to commit suicide. Hon'ble the Supreme Court in ***Ramesh Kumar Vs. State of Chhattisgarh : 2001(4) RCR (Criminal) 537***, clarified that 'instigation' involves active encouragement of provocation. The relevant part of the observations of the Apex Court read as thus:-

“Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the



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consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.”

14. Further, in ***Rajesh Vs. State of Haryana : 2019 AIR SC 478***, Hon'ble the Supreme Court observed that in order to bring a case within the purview of Section 306 of the IPC, there must be a direct and proximate cause between the actions of the accused and the victim's decision to commit suicide. Merely alleging harassment without a specific and immediate link to the suicide would not be enough to satisfy the ingredients of an offence under Section 306 of the IPC.

15. In the present case, the complainant testified that her husband, the deceased, purchased a car from the car agency of petitioner Om Prakash and was allegedly cheated with two different bills. It is a matter of record and was not disputed by the learned counsel for respondent No.2-complainant that the deceased during his lifetime had filed an FIR against petitioner Om Prakash under Section 420 of the IPC, however, it was cancelled by the police. Additionally, qua petitioner Vinod Goyal it was alleged that he had borrowed money from the deceased, partially repaid it, and then later refused to return the remaining amount, which caused further distress to the deceased. Both these incidents occurred separately and were not even remotely linked to each other nor were they proximate in time to the suicide of the deceased on 25.08.2016. Simply alleging that the deceased was

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'under stress' and 'felt harassed', without any specific act attributed to the petitioners, would not constitute 'instigation' under Section 306 of the IPC.

16. Furthermore, the learned Trial Court definitely fell into error in assuming that the cancellation of the FIR against petitioner Om Prakash occurred shortly before the suicide of the deceased and thus distressed the latter. Regardless, the cancellation of an FIR by the investigating agency, which is under a statutory duty to investigate a case thoroughly, cannot be considered an act of instigation, leading to suicide.

17. In the light of the above, it is clear that in the absence of any strong and cogent evidence required to summon the petitioners under Section 319 of the Cr.P.C., the learned Trial Court erroneously summoned the petitioners under Section 319 of the Cr.P.C. Accordingly, both the petitions are allowed and the impugned order dated 22.03.2022 whereby the petitioners have been summoned under Section 319 of the Cr.P.C. to face trial, is set aside.

18. All pending applications, if any, stand disposed of.

09.09.2024

(MANJARI NEHRU KAUL)
JUDGE

Vinay

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No