



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

CRR-1306-2023

Date of Decision : **August 20, 2024**

JAI KISHAN

.....Petitioner

VERSUS

STATE OF HARYANA AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI

Present : Mr. Suman Jain, Advocate
for the petitioner.

Mr. Bhupender Singh, D.A.G., Haryana.

Mr. Keshav Pratap Singh, Advocate and
Mr. S.S.Gill, Advocate for respondent No.2.

KULDEEP TIWARI, J. (Oral)

1. Through the instant revision petition, challenge is thrown to the order dated 25.4.2023, whereby the application filed under Section 193 Cr.P.C. for taking cognizance against respondent No.2-Sanjay has been dismissed by the learned trial Court concerned.

2. The prosecution agency was set into motion by one Sanjay son of Om Prakash, who informed the police authority, regarding missing of his mother, namely, Resham since 17.7.2022. Initially the instant FIR was registered on dated 18.7.2022 for an offence punishable under Section 346 IPC. Thereupon, the body of Resham, was recovered on 21.7.2022 and Rohtash, who is brother of deceased-Resham (mother of complainant-



Sanjay), got recorded his statement, the relevant extract of the same reads as under:-

“That on dated 21.07.2022 brother of the deceased Resham namely Rohtash give an application to head constable Sushil wherein he stated that he had full apprehension that his nephew Sanjay had killed his sister Resham along with his family and the dead body of Resham was hide by them. It is relevant to mention here that no source of information was given by the brother of the deceased Rohtash that how he alleged that his nephew killed his sister. Moreover the motive was shown that 2 acres of land was in the name of his sister and for said 2 acres his nephew Sanjay killed his sister. It is relevant to mention here that the said 2 acres of land was even otherwise also should gone to the share of Sanjay as he is the only son of the deceased. Therefore the motive was shown wrongly by the brother of deceased Resham.”

3. On the basis of the above statement, the complainant was transposed as an accused in the instant case. The investigation agency was set into motion and Sanjay got recovered the dead body of Resham, motor cycle, plastic sack and one pillow.

4. On 25.7.2022, on the disclosure statement of Sanjay, offence under Section 120-B IPC was added and Reema and Sunil were arraigned as an accused in the FIR (supra). During investigation, respectively No.2-Sunil was found innocent. Even an application under Section 193 Cr.P.C., to summon Sunil as an additional accused was also dismissed by the learned trial Court concerned vide impugned order (supra). The Board of Doctors gave the following opinion:-

“We are of the opinion that the cause of death in this case is head injuries and its complications.”



5. Learned counsel for the petitioner while making an attempt to throw challenge to the legality of the order (supra) has drawn the attention of this Court to Annexures P-2 and P-3, i.e. pen drive and photographs, to submit that Sunil, was clearly seen with deceased Resham on dated 17.7.2022, which is the date of occurrence. He further submits that the call details of the accused persons annexed as Annexure P-5, also reflect that Sunil, and his father Sanjay, both were on the same locations and this clinching evidence has not been taken into consideration by the learned trial Court concerned while declining the application preferred under Section 193 Cr.P.C. He also submits that the petitioner, who later on become complainant in the instant FIR, has categorically stated in his statement that Sunil is also involved in the crime. Finally, he submits that all the above mentioned evidence, was sufficient for the learned trial Court concerned to form an opinion regarding the involvement of the accused-Sunil, therefore, the learned trial Court concerned ought to have summoned Sunil to face the trial alongwith other co-accused while exercising its powers under Section 193 Cr.P.C.

6. The submission so made by the learned counsel for the petitioner has been opposed by the learned counsel for respondent No.2 by submitting that there is no conclusive evidence as on date to establish that the phone number belongs to Sunil. He further submits that in the photographs, Sunil is not clearly visible and whether these photographs, or the CCTV footage is of the same day, or near to the date of occurrence, is yet to be ascertained and established by the prosecution. Finally, he submits that there is no sufficient evidence to connect Sunil with the present crime, therefore, the learned trial Court concerned has rightly rejected the application of the complainant.



7. This Court has considered the rival submissions made by the learned counsel for the parties concerned, and the impugned order (supra), and finds no perversity or illegality in the same. There is no dispute regarding the powers of the learned trial Court concerned under Section 193 Cr.P.C. to summon additional accused *qua* whom there is sufficient evidence, which established the *prima facie* case. However, in the instant case, all the material which has been relied upon by the complainant for the purpose of summoning of respondent No.2 is required to be established by way of leading cogent evidence during the course of trial. The learned trial Court concerned while declining the application has observed as under:-

“From the perusal of the final report, the learned Public Prosecutor along with complainant counsel failed to show any CAF of the above said mobile numbers to show prima-facie that a particular number belongs to Sunil, his location was found at the spot. There are CDRs of two mobile numbers i.e. 8685970278 and 9034203086 on record but from the said CDRs and the statement of the witness Ct. Jaivir, who had taken out the prints out of the CDRs, it cannot be made out that the said mobile numbers belong to accused Sunil. The learned Public Prosecutor along with complainant counsel failed to show from the final report that particular number belongs to Sunil. Also, there is one affidavit and certificate of the villagers, Numberdar and other respectables of village Baniyani, whereby they have stated that Sunil had been falsely implicated. The learned Public Prosecutor failed to explain the said affidavit. The evidence in the form of CCTV footage and CDRs collected during investigation are to be tested during the evidence of

concerned witnesses. At this stage, this court does not find that there is sufficient evidence to of take cognizance against Sunil and to summon him as an accused under section 193 Cr.P.C. The evidence on which the learned counsel has relied upon would be matter of trial.”

8. This Court concurs with the observations, as made by the learned trial Court concerned, whether the tower locations and the mobile phone belongs, or used by respondent No.2-Sunil, is yet to be established by the prosecution. Therefore, the instant petition is, hereby, **dismissed** and the impugned order dated 25.4.2023, is ordered to be maintained.

9. It goes without saying that in case in future the prosecution is able to bring any positive evidence on record, which could establish the culpability of Sunil in the instant crime, the prosecution/complainant is at liberty to file an appropriate motion.

10. The above observations are meant for the purpose of deciding the legality of the impugned order and would not have any bearing upon the trial in any manner.

August 20, 2024
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No