



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

CRR-1096-2017

Reserved on:- 08.08.2024

Pronounced on:- 20.08.2024

HARJINDER SINGH @ JINDER & ANR.

...Petitioners

Vs.

STATE OF PUNJAB & ANR

...Respondent

CORAM:-HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Rajvir Singh, Advocate for the petitioners.

Mr. Kewal Singh, Addl. A.G. Punjab.

Mr. Vijay Lath, Advocate for respondent No.2.

AMARJOT BHATTI, J. (Oral)

1. Petitioners Harjinder Singh @ Jinder and Harwinder Kaur @ Babli have filed revision against impugned order dated 14.02.2017 passed by learned Sessions Judge, Ropar vide which application under Section 319 Cr.P.C. filed by the prosecution for summoning of additional accused was partly allowed by summoning the present petitioners.

2. As per facts of the case, FIR No.68 dated 18.06.2015 was registered under Section 302/34 IPC Police Station Sadar Roopnagar on the statement of Jaspal Kaur - mother of the deceased victim. Complainant Jaspal Kaur stated that her daughter Satwinder Kaur @ Rani was married to Kashmir Singh son of Banta Singh about 12 years ago. Out of this



wedlock, she was having daughter aged 11 years and son aged about 8 years. Her son-in-law Kashmir Singh was serving in Army who had come on vacation for the last about 10 days. On 16.06.2015 at about 9 pm, she received call from her daughter Satwinder Kaur that she was being harassed and beaten up by her husband Kashmir Singh, elder brother-in-law Harjinder Singh @ Jinder Singh, his wife Babli, father-in-law Banta Singh and mother-in-law Shakuntla Devi. On 17.06.2015 at about 10 am, she received a call from her son-in-law Kashmir Singh who told her to reach his village immediately. She along with her daughter-in-law Harpreet Kaur came to village Bardar and came to know that some poisonous substance was given to her daughter Satwinder Kaur by her husband and aforesaid family members due to which she died. She waited for her son Gurdeep Singh to reach who was also serving in Army at Bathinda and then got her statement recorded.

3. Challan in this case was presented against Banta Singh, Kashmir Singh and Shakuntla Devi. Kashmir Singh and Banta Singh faced trial whereas Shakuntla Devi could not be arrested and proceedings under Section 82 Cr.P.C. were initiated against her. Present petitioners were found to be innocent. Banta Singh and Kashmir Singh were chargesheeted under Section 302 IPC. After recording of statement of Jaspal Kaur as PW1, application was filed under Section 319 Cr.P.C. to summon present petitioners as additional accused along with Shakuntla Devi to face trial along with Banta Singh and Kashmir Singh. Said application was disposed of by passing impugned order dated 14.02.2017 vide which application filed qua Shakuntla Devi under Section 319 Cr.P.C. was held to be not maintainable as proceedings qua her were initiated under Sections 82



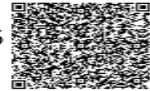
Cr.P.C., whereas present petitioners Harjinder Singh @ Jinder and Harwinder Kaur @ Babli were ordered to be summoned under Section 302/34 IPC. Feeling aggrieved of this order, present revision has been filed.

4. Learned counsel for petitioners argued that parents of petitioner No.1 owned a residential land in village Purkhali. The deceased wanted to shifted in the house situated in village Purkhali along with her children. Husband of Satwinder Kaur told his wife that they could shift only after his retirement from service. Out of anger, Satwinder Kaur consumed some poisonous substance in the presence of her children. Complainant has involved entire family in this false case. Complainant wrongly claimed that her daughter was forced to consume poisonous. As per post-mortem report (Annexure P-2) there was no mark of injury on the body of Satwinder Kaur. Statement of complainant Jaspal Kaur recorded in the Court is Annexure P-3. Petitioner No.1 is also serving in Army and was posted at Amritsar. Certificate regarding his leave and joining duty is Annexure P-4. There are statements of children of Satwinder Kaur recorded under Section 164 Cr.P.C. (Annexure P-6 & P-7) confirming the stand taken by the petitioners. It is further pointed out that at present Kashmir Singh and Banta Singh are also acquitted of the charge framed against them vide judgment dated 08.12.2017 in sessions case No.03. Dated 16.01.2017 titled as "State Vs. Banta Singh & Others". Present petitioners are not attributed any specific role. The allegations are general in nature. No such occurrence ever took place. Without considering the facts and the statements of children recorded under Section 164 Cr.P.C. present petitioners are ordered to be summoned to face trial in the aforesaid FIR by passing impugned



order dated 14.02.2017. To support his arguments, learned counsel for petitioners has relied upon the judgment of Coordinate Bench of this Court in *2024 (1) RCR (Criminal) 118* titled as *“Varinder Singh Vs. State of Punjab and Another”*. It is argued that impugned order dated 14.02.2017 may kindly be set aside by accepting the present revision.

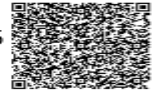
5. On the other hand, learned counsel representing the State argued that after framing of chargesheet against the main accused Kashmir Singh and Banta Singh application was filed under Section 319 Cr.P.C. to summon Harjinder Singh @ Jinder and Harwinder Kaur @ Babli to face trial along with other accused. Statement of Jaspal Kaur (PW1) cannot be ignored. In her statement (Annexure P-3) she categorically stated that on 16.06.2015 she received call from her daughter Satwinder Kaur that she was being harassed and beaten up by her husband Kashmir Singh, father-in-law Banta Singh, mother-in-law Shakuntla Devi, brother-in-law Harjinder Singh @ Jinder Singh and wife Harwinder Kaur @ Babli. On the next day, she received call from Kashmir Singh to reach their house immediately and on reaching there she came to know that his daughter was taken to Civil Hospital Ropar and she had already expired. Complainant categorically stated that her daughter was forced to consume some poisonous substance as a result she expired. Present petitioners were living in the same house. Similar allegations were levelled against them. Deceased victim had called her mother one day prior to the occurrence and had disclosed about her condition. Considering the facts, statement of Jaspal Kaur (PW1) and unnatural death of Satwinder Kaur @ Rani, present petitioners were rightly summoned on application under Section 319 Cr.P.C. Therefore, impugned order dated 14.02.2017 passed by learned



Sessions Judge, Ropar does not require any interference.

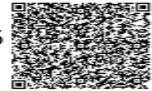
6. I have considered arguments advanced by learned counsel for petitioners, learned counsel representing State and have gone through the record carefully. Present FIR was registered on the statement of Jaspal Kaur mother of the deceased victim Satwinder Kaur @ Rani. Satwinder Kaur @ Rani was married to Kashmir Singh about 12 years ago who was serving in Army. Her elder brother-in-law Harjinder Singh @ Jinder petitioner No.1 was also serving in Army. Wives of both brothers and their children were residing in the matrimonial house. Banta Singh is father-in-law and Shakuntla Devi is mother-in-law of deceased victim. As per the facts of the case occurrence took place on 17.06.2015 when Jaspal Kaur received call from her son-in-law Kashmir Singh to reach their house immediately. On reaching there she came to know that Satwinder Kaur was already shifted to Civil Hospital, Ropar where she was declared dead. It is the case of Jaspal Kaur that she had received a call on 16.06.2015 where her daughter Satwinder Kaur @ Rani disclosed her that she was harassed and beaten up by her husband and entire family. In this case Kashmir Singh husband and Banta Singh father-in-law faced trial in which both of them are acquitted, since prosecution had failed to prove the charges beyond reasonable doubt and they were acquitted by giving them benefit of doubt. Said judgment dated 08.12.2017 is marked as 'X'. Along with present revision, petitioners have placed on record statements of Navneet Kaur and Anmol Singh as Annexures P-6 & P-7 recorded under Section 164 Cr.P.C. by the then Judicial Magistrate 1st Class, (Duty), Rupnagar dated 07.04.2016, supporting the stand taken by the present petitioners.

7. I have also gone through the statement of Jaspal Kaur (PW1)



recorded before the trial Court as Annexure P-3. Deceased victim was married to Kashmir Singh about 13 years ago and she was having two grown up children daughter aged about 11 years and son aged about 8 years. Kashmir Singh was serving in Army who had come home on vacations. The witness conceded that after marriage, her daughter lived in the matrimonial home most of the time. Her daughter and son-in-law were having joint bank account in which salary of Kashmir Singh was received and her daughter was withdrawing money to run her household expenditure. It is also conceded that petitioner No.1 Harjinder Singh @ Jinder was also serving in Army and his wife Harwinder Kaur @ Babli was also residing in the matrimonial home. It has further come on record during her statement that there are portions in the house having two kitchen. Harjinder Singh petitioner No.1 was posted at Amritsar at the relevant time. It is also confirmed by Jaspal Kaur (PW1) that in-laws of her daughter were having house at village Purkhali. Said house was lying vacant. The witness denied suggestion that her daughter wanted to shift in said house along with children. However in her statement she herself stated that she had told her daughter not to shift in the house at Purkhali since her husband was posted faraway. She further stated that when she (PW1) had gone to the house of accused, Harjinder Singh @ Jinder had told her, to tell her daughter not to shift Purkhali. Statements of children of the deceased victim are Annexure P-6 and P-7 confirming the aforesaid controversy that their mother wanted to shift the house at village Purkhali.

8. Gainful reference can be made to the judgment of Hon'ble Supreme Court of India case titled as ***"Hardeep Singh Vs. State of Punjab and others"*** [Law Finder Doc Id # 514451] 2014 (3) SCC 92 where in



relevant para Nos.98 and 99 it was observed as under:-

“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.”

Therefore, statement of Jaspal Kaur as PW1 (Annexure P-3) has to be considered as a whole. For the purpose of summoning additional accused under Section 319 Cr.P.C. it requires much more stronger evidence than mere prima facie which is seen at the time of framing of chargesheet. Mere fact that present petitioners were related to the deceased



victim as elder brother-in-law and his wife living in the same house, is not sufficient to summon them and to face trial along with other accused. Considering the contents of FIR and the statement of Jaspal Kaur - PW1 (Annexure P-3) coupled with the statements of children recorded under Section 164 Cr.P.C. (Annexure P-6 & P-7), I do not find sufficient strong evidence on record to summon the present petitioners on application under Section 319 Cr.P.C. Judgment of acquittal in favour of main accused Banta Singh and Kashmir Singh cannot be ignored.

9. Considering the aforesaid facts and circumstances of the case, impugned order dated 14.02.2017 passed by learned Sessions Judge, Ropar to summon the present petitioners as additional accused is set aside by accepting present revision.

10. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

20.08.2024

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned: Yes/No.

Whether reportable: Yes/No