



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

242

CRR-934-2021
Date of decision: August 23rd, 2024

State of Haryana
.....Petitioner

Versus
Maksud and others
.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Gagandeep Singh Chhina, Assistant Advocate General,
Haryana, for the petitioner.

Ms. Pratibha Duggal, Advocate
for the respondents.

MANJARI NEHRU KAUL, J.

This is a revision filed by the State of Haryana to impugn the order dated 10.01.2020, wherein an application moved under Section 319 of the Cr.P.C. by the prosecution to summon the private respondents Maksud, Nusrat and Julia in case FIR No.75 dated 13.05.2019 under Sections 302 and 342 read with Section 34 of the IPC, registered at Police Station Sadhaura, was declined.

2. Learned counsel appearing for the State has argued that the impugned order is flawed in both, the facts and law and hence, is liable to be set aside. It has been further submitted that the learned trial Court, while passing the impugned order, failed to properly analyse the facts on record, particularly with respect to the role attributed to the private respondents. Furthermore, while passing the impugned order, the trial Court unduly prioritized presumptions while overlooking the entire facts of the case. In addition, the learned trial Court also ignored the settled law pertaining to the summoning of an accused under Section 319 of the

Cr.P.C. While drawing the attention of this Court to the statement of the complainant, Exhibit PA, learned counsel has argued that it clearly details that Ami Chand informed that Imran (hereinafter referred to as 'deceased') was tied up by Nissar, Sadhudeen Julia, Nusrat, Naseema and Maksud in their house. Upon reaching the house of the accused, the complainant and his father found the deceased tied to a pillar, with injuries all over his body. Although the complainant was not present during the incident, one of the witnesses categorically told them about alleged occurrence and the presence of the deceased in the house of the accused left no manner of doubt about the link of the accused to the crime in question. Furthermore, given that the accused was named in the first statement and the FIR in question, there was a presumption against them that required evidence for corroboration. The conclusion of the trial Court thus, is based on speculation, which is against the settled principles of law. A prayer has, therefore, been made that the private respondents be summoned to face trial.

3. Learned counsel appearing for the private respondents has vehemently opposed the prayer and submissions made by the learned State counsel and has submitted that the impugned order does not warrant any interference. The complainant is not even an eyewitness to the alleged occurrence and has on account of previous enmity, tried to implicate the entire family of the accused. It has been argued that it was the investigating agency, who after a thorough investigation of the case, rightly did not challan the private respondents because no incriminating evidence had come to the fore reflecting the involvement of the private respondents with the crime in question.

4. I have heard learned counsel for the parties and perused the

relevant material on record.

5. Under Section 319 of the Cr.P.C., the trial Court has the power to summon any person as an accused during the trial if the evidence led suggests that he or she has committed an offence for which they could be tried alongside the already challaned accused. The standard of proof for summoning an additional accused under Section 319 of the Cr.P.C. is higher than that required for framing of charges. This discretionary power should be exercised sparingly and only in cases where the circumstances justify. A person cannot be merely summoned to face trial based on strong suspicion unless there is a realistic possibility of their conviction. There must be reasonable satisfaction that the person sought to be summoned committed the offence, and thus, summoning should not be used as a tool for harassment. Hon'ble the Apex Court has time and again reiterated that a person can be summoned under Section 319 of the Cr.P.C. only if there is more than a *prime facie* case, although less than the standard required for conviction. Thus, it needs to be underscored that power under Section 319 of the Cr.P.C. must be used cautiously to advance the cause of justice.

6. In *Hardeep Singh Versus State of Punjab 2014 (3) SCC 92*, Hon'ble the Supreme Court has laid down the following parameters, which must 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 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.*

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?"

7. Adverting to the present case, it is crucial to note that the prosecution case was set in motion on the statement Exhibit PA of Umardeen, who reported to the police about the death of his son, without naming the accused. Furthermore, when the police arrived, the body of deceased Imran was found at Umardeen's house. There was no eyewitness account of the murder of Imran, and during investigation, private respondents Maksud, Nusrat and Julia were found innocent and were placed in column No.2 of the challan. Moreover, as per the

statement of the complainant, Exhibit PA, on the morning of 13.05.2019, one Ami Chand informed the complainant that deceased Imran had been tied up by Nissar, Sadodeen, Julia, Nusrat, Naseema and Maksud at their house. The complainant, accompanied by his father and one Mustak, went to the house of the accused and allegedly discovered deceased Imran tied to a pillar with a rope, with injuries to his head, legs, and other parts of his body. His toes were also bound together, and when they untied him, he was found dead.

8. In the aforementioned facts and circumstances, this Court finds no reason to disagree with the trial Court and, therefore, upholds the impugned order.

9. The instant petition stands dismissed.

10. 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.

August 23rd, 2024
Puneet

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No