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IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRR-1607-2019 (O&M)
Date of decision: 28.11.2024

Ramesh Kumar ...Petitioner

Versus

State of Haryana and others ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ajay Gupta, Advocate
for the petitioner.

Mr. Arjun Lakhanpal, Addl. A.G., Haryana.

Mr. Rajesh Lamba, Advocate
for respondent No. 2.

Mr. Ashit Malik, Advocate
for respondent No. 3..

MANISHA BATRA, J. (Oral)

1. This revision petition has been filed by the petitioner against the order dated 06.06.2019, passed by the Court of learned Additional Sessions Judge, Sonipat in Sessions Case No. 117 of 2018, titled as *State vs. Suresh Vats*, arising out of FIR No. 177 dated 16.04.2017, registered under Section 306 of Indian Penal Code (for short 'IPC') and Sections 27 and 30 of the Arms Act, 1959 at Police Station City Sonipat, District Sonipat, whereby an application filed by the petitioner/complainant under Section 319 of the Code of Criminal Procedure (*for short 'the Code'*), seeking summoning of respondents No. 2 and 3 as additional accused to face the trial, had been dismissed.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of a

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written complaint submitted by the present petitioner, whose son Deepak @ Bablu had died a suicidal death by hanging himself as on 15.04.2017. The victim had left a suicide note holding one Suresh Vats, the accused already arraigned, and respondents No. 2 and 3 (proposed additional accused) responsible for his death. During the course of investigation, accused Suresh Vats was arrested and he is presently facing trial for commission of aforementioned offences, whereas the proposed additional accused were found to be innocent and their names were kept in Column No. 2 of the challan report. After recording of the statement of the petitioner on oath, an application had been moved by him for summoning the proposed additional accused as such, which had been dismissed by the learned trial Court by passing the impugned order. Feeling aggrieved, the petitioner/complainant has filed the present revision petition.

4. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as just before committing suicide, the victim had made a telephonic call to the petitioner on 15.04.2017, thereby disclosing that the proposed additional accused and Suresh Vats were extending threats to kill him from many days and then had disconnected the call. Shortly thereafter, the victim was seen live on Facebook by the brother-in-law of the petitioner while committing suicide. It is further submitted that the victim had left a diary giving details about the manner in which he had been harassed by the proposed additional accused and Suresh Vats and had also written a suicide note on the wall of his room. The photocopies of the diary and photographs of the suicide note had been handed over to the investigating agency. The evidence produced on record was

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sufficient to prove the involvement of the proposed additional accused in abetting suicide by the victim. Rather, he was compelled by the proposed additional accused and Suresh Vats and was not left with any other option but to end his life. Therefore, the proposed additional accused were certainly liable to be summoned and tried for commission of aforementioned offences along with Suresh Vats, the accused already arraigned. Learned counsel for the petitioner has further argued that while passing the impugned order, the learned trial Court did not apply its judicious mind. A non-speaking and perverse order has been passed. With these broad submissions, it is urged that the present petition deserves to be allowed and the impugned order is liable to be set aside.

5. Learned State counsel has not raised any serious objection to allowing the present petition but has submitted that after conducting a thorough investigation in matter, the proposed additional accused were found to be innocent and that is why they had not been arrested and challaned.

6. On the other hand, learned counsel for respondents No. 2 and 3, who are the proposed additional accused, have argued that the impugned order passed by the learned trial Court does not deserve any interference as the same is well reasoned. The police had conducted a thorough investigation in the matter and had found them to be innocent. Even otherwise, neither ingredients of Section 306 of IPC nor of offence under the Arms Act was attracted against them at all. The evidence produced on record was reiteration of the allegations in the FIR, which had already been taken into consideration by the investigating agency and had been found to be false. Therefore, it is urged that the petition is liable to be dismissed.

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6. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record carefully.

7. Section 319 of the Code empowers the Court to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with other accused. The principle of law with reference to exercise of jurisdiction under this Section has been well settled by the Constitution Bench of Hon'ble Supreme Court in a celebrated pronouncement cited as ***Hardeep Singh and others Vs. State of Punjab and others : (2014) 3 SCC 92***, wherein it was observed that the power under Section 319 of the Code is discretionary and an extraordinary power. It has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. 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 material placed before the Court, such power should be exercised and not in a casual and cavalier manner. It was also observed 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 strong evidence than mere probability of his complicity. The test that has to be applied is one which is more than *prima facie* case as has been established 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 of the Code. In a recent judgment rendered by

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Hon'ble Supreme Court in *Sukhpal Singh Khaira vs. State of Punjab : (2023) 1 SCC 289*, it is held that the power bestowed on the Court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the Court, if it appears to the Court that such evidence points to any person other than the accused who are being tried before the Court to have committed any offence and such accused has been excluded in the charge sheet or in the process of trial till such time could still be summoned and tried together with the accused for the offence which appears to have been committed by such persons summoned as additional accused.

8. On applying the above discussed principle of law to the peculiar facts of the present case, this Court gathers an impression that the learned trial Court did not commit any irregularity or illegality in dismissing the application filed under Section 319 of the Code. Section 107 of IPC defines the offence of abetment. To constitute abetment, it is to be proved that the accused instigated a person either by act or omission. It is required to establish and show the *mens rea* on the part of the accused and further that in furtherance of that state of mind, he abetted a crime. So far as Section 306 of IPC is concerned, the essential ingredients of this offence are the abetment and the intention of the accused to aid or instigate or abet a person to commit suicide. It is required to be proved that the person, who is alleged to have abetted the commission of suicide, played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Merely on the allegations of harassment and without there being any positive action proximate to the time of occurrence on the part of the accused, which

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led or compelled a person to commit suicide, an accused cannot be convicted under Section 306 of IPC. In the present case, the victim had allegedly left a suicide note on the wall of his room and had also written about the manner in which he had been harassed by the proposed additional accused and aforesaid Suresh Vatsh. The petitioner had alleged in his complaint that the proposed additional accused along with Suresh Vats had been harassing the victim, which led him to commit suicide. The investigating agency, after conducting a thorough investigation in the matter while taking into consideration the allegations made by the complainant as well as the material available on record, had found the proposed additional accused to be innocent. This Court has perused the statement of the petitioner recorded before the learned trial Court, which reflects that he had only reiterated his allegations and had not placed on record any material or cogent evidence which could inspire confidence in the mind of the Court that respondents No. 2 and 3 were liable to be summoned as additional accused. Photocopy of the alleged diary has been produced on record and the contents of the same have been gone through by this Court, which reveal that there was no instigation, aid or goading on the part of respondents No. 2 and 3 to abet the suicide by the victim.

9. It is well settled proposition of law that the provisions of Section 319 of the Code, being salutary one, the same cannot be diluted by importing within its scope the principles of natural justice which in any case would be followed during the trial. It is the duty of the Court to give further effect to the words used by the Legislature in Section 319 of the Code, so as to encompass any situation which the Court may have to deal with while proceeding to try an offence and not to allow the person, who deserved to be tried, to go scot

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free by not being summoned for the commission of crime which can be gathered from the material presented by the prosecution. 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. The evidence produced on record by the prosecution in the form of testimony of the complainant is prima facie sufficient to prove the complicity of the accused and it is this evidence that has to be taken into consideration. Reference in this regard can be made to the observations made by Hon’ble Supreme Court in *Saeeda Khatoon Arshi vs. State of U.P. and another : (2020) Supreme Court Cases 323* and *Suman vs. State of Rajasthan and another : 2010 AIR (Supreme Court) 518*.

10. In view of the discussion as made above, no illegality or infirmity is found in the impugned order, as the same has been passed by the learned trial Court after analyzing the facts of the case in a proper perspective. Accordingly, finding no merit in the petition, the same is dismissed.

11. However, it is made clear that any observation made herein above shall have no bearing on the merits of the case as the same are only for the purpose of deciding the present petition.

28.11.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes