

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

**Criminal Revision No. 1394 of 2021 (O&M)
Date of Decision: 27.02.2024**

Laxmi

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sandeep Thakan, Advocate
for the petitioner-complainant.

Mr. Rajiv Sidhu, Deputy Advocate General, Haryana
for respondent No. 1.

None for respondent No. 2 (Kailash Gujjar) despite service.

HARKESH MANUJA, J.

CRM-38712-2021

Prayer in the present application moved on behalf of the petitioner, is for placing on record the documents / disclosure statements dated 20.03.2019 made by the co-accused, namely, Kuldeep, Sandeep @ Motiya and Deepak, as Annexures P-4 to P-6, respectively.

Application is **allowed**, as prayed for, subject to all just exceptions. The aforesaid documents / disclosure statements of the co-accused are taken on record as Annexures P-4 to P-6.

Registry to do the needful.

MAIN CASE

The petitioner-complainant, by way of present revision petition, seeks setting aside of the order dated 08.09.2021 passed by the

learned Additional Sessions Judge, Narnaul, whereby an application under Section 319 of the Code of Criminal Procedure (for short “Cr.P.C.”), filed at the instance of prosecution / complainant, for summoning respondent No. 2–Kailash Gujjar (**hereinafter to be referred as “proposed accused”**) as an additional accused to face trial in case FIR No. 77 dated 14.03.2019, under Sections 364, 302 & 34 of IPC, registered at Police Station Kanina, was dismissed.

[2] Learned counsel for the petitioner submits that as per statement of the petitioner-complainant (Laxmi), the proposed accused was specifically named, while making allegation to the effect that he alongwith co-accused, namely, Kuldeep, Sandeep @ Mutiya and Deepak called Mukesh (since deceased) from her house and was actively involved and responsible for committing the offences, having assisted the accused, who were facing trial and thus, was required to be summoned as an additional accused. Learned counsel also submits that the Court below failed to exercise jurisdiction vested in it, while declining the prayer made in the application.

[3] In support, learned State Counsel also submits that the proposed accused was specifically named in the complaint (Ex. P8), on the basis of which FIR was registered. He further submits that in the examination-in-chief of the petitioner-complainant (PW-13), the name of proposed accused was specifically mentioned. He thus also supports the petitioner.

[4] Despite service, no one has chosen to appear on behalf of respondent No. 2 (Kailash Gujjar), i.e. the proposed accused.

[5] I have heard learned counsel for the petitioner and the learned State Counsel and gone through the paper-book / relevant record.

[6] In the present case, on a complaint filed by the petitioner for her son having gone missing, the FIR (supra) was registered. Thereafter, she again presented complaint (Ex. P8) alleging that her son-Mukesh was murdered by Kuldeep, Motiya, Deepak, Kailash Gujjar (the proposed accused) and apart from it, the other persons, namely, Ghanshyam, Manjeet, Thanu, Manuvo, Ankit and his younger brother-in-law were also named. After investigation, the challan was submitted against three accused, namely, Kuldeep, Sandeep @ Motiya and Deepak. Upon framing of charge, PW-13, Laxmi Devi – complainant appeared and made specific deposition about the role of respondent No. 2 in the murder of her son Mukesh. Relevant extract from the deposition of Laxmi Devi is reproduced hereunder:-

“ Stated that on 11.3.2019 my son Mukesh was at home, accused namely Deepak Motia, Kallash and Kuldeep had come to my house and took away my son Mukesh. I inquired from all accused as to why my son had not returned at home but they did not give the satisfactory reply. Thereafter, I inquired from the neighbourhood, but there was no clue about Mukesh. On 13.3.2019, accused Kailash and Kuldeep came to my home and handed over one mobile and purse of deceased. I inquired the missing of Mukesh in the relatives and neighbourhood on 14.3.2019, accused Kailash and Kuldeep came to my home and told me to go to the police station for lodging the missing of

Mukesh. The half of missing application was scribed by Kuldeep and half was scribed by accused Kailash, on the dictation of Ishwar (Tau). The missing application is Ex. PW13/A which bears my signature at point A. I asked accused Kuldeep and Kailash where my son had gone and they remained mum. I again asked both the accused but they did not give satisfactory reply. ”

[7] While passing the impugned order dated 08.09.2021, the Court below did not rely upon the aforesaid deposition made by the petitioner-complainant for the reason that there was some improvement made therein, while appearing as PW-13, as compared to her complaint Exhibit P-8, which formed basis of the FIR in question. Relevant extract of reasoning recorded by the Court below in para-5 of its order is reproduced hereunder:-

“ In the evidence i.e. examination in chief of PW13 Laxmi Devi some improvement has been made that on 13.03.2019 accused Kailash who is sought to be summoned as an additional accused and Kuldeep came to her house and handed over one mobile and purse of deceased. Further, as per this witness on 14.03.2019 accused Kailash and Kuldeep came to her house and told her to go to Police Station for lodging missing report of Mukesh. This fact is not mentioned in the complaint Ex.P8. The improvement made by this witness in her examination in chief is not supported by complaint Ex.P8 submitted by her. ”

[8] A perusal of the aforementioned reasoning shows that the Court below in fact travelled beyond its jurisdiction as vested under section 319 Cr.P.C. having evaluated and compared the deposition of petitioner-complainant with her complaint made before the police. The

Court below failed to appreciate that at the stage of consideration upon application under section 319 Cr.P.C., the complainant had no opportunity of being confronted with the contents made in her complaint, thereby granting her an opportunity to explain the same if so, in any manner and thus, the impugned order cannot be sustained.

[9] In view of the discussion made here-in-above, finding merits in the present revision petition; the impugned order dated 08.09.2021 passed by the learned Additional Sessions Judge, Narnaul, is hereby set aside and the matter is sent back to the trial Court for passing a fresh order. Further, considering the fact that the FIR relates to the year 2019, the needful shall be done within a period of three months from today.

[10] **Disposed off** accordingly.

[11] Pending miscellaneous application(s), if any, shall also stand disposed off.

February 27, 2024
'dk kamra'

(HARKESH MANUJA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>