

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1562-2021 (O&M)
Reserved On: 04.04.2024
Decided On: 09.04.2024

SUKHBIR

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. R.A. Sheoran, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana

Mr. P.S. Sullar, Advocate
for Respondents no.2 and 3

HARPREET SINGH BRAR, J.

1. The prayer in the present revision petition is for setting aside the impugned order dated 02.11.2021 passed by learned Additional Sessions Judge, Charkhi Dadri vide which the application filed by the petitioner-complainant under Section 319 of the Cr.P.C. for summoning respondent no. 2 to 5 as additional accused in the criminal case arising out of FIR No. 299 (Annexure P-1) dated 30.10.2019 registered under Sections 304-B/34 of the IPC registered at Police Station Dadri City, has been dismissed.

FACTUAL BACKGROUND

2. Briefly, the facts are that the petitioner-complainant lodged the FIR (supra) alleging that his daughter was married to accused Pardeep on 05.02.2013. After marriage, the accused husband along with his parents, i.e., respondent no.2 and 3 started harassing the daughter of the petitioner for dowry

and ultimately murdered her on 29.10.2019 for the same. During the investigation, accused Pardeep was arrested, whereas, his father-respondent no.2 and mother-respondent no.3 were found to be innocent. Consequently, the learned trial Court framed charges against the accused Pardeep on 18.01.2021 under Section 304B of IPC. Thereafter, the petitioner moved an application under Section 319 Cr.P.C. for summoning respondent no. 2 to 5 as additional accused, which was dismissed vide impugned order dated 02.11.2021. Aggrieved by the same, the petitioner has approached this Court by way of the present revision petition.

CONTENTIONS

3. Learned counsel for the petitioner vociferously contends that the petitioner while being examined as PW1 before the learned trial Court, made specific allegations against respondent no.2 and 3 of commission of murder of his daughter. He further submits that accused Pardeep was an employee of Haryana Police at the time of the commission of the offence due to which efforts were made during the investigation so that he could get the benefit of doubt from the learned trial Court. He further submits that respondent no.4 was present at the spot of occurrence and prepared the recovery memo of the government issued pistol and the mobile phone of the accused but intentionally left out the part from where the said recovery was made. It is further contended that it is specifically mentioned in the FIR (supra) that Crime Scene Team reached the place of occurrence and clicked photographs of the same and also prepared a DVD qua the same but the head of the forensic team who prepared the said DVD was not cited as a witness in the Challan submitted by the Special Investigation Team. It is further mentioned in the Challan that the said

photographs and DVD are still to be prepared even though, the same were prepared on the spot. Respondent no.5 being the police official who conducted the investigation, in order to save the accused, intentionally omitted the information regarding the said photographs and DVD from the recovery memo dated 16.01.2020 which was prepared by him at the spot of occurrence.

4. He further submits that the said photographs clearly show that feet of the deceased, who died by hanging were touching the ground and her knees were just 6 inches above ground and she had an injury mark on her hand as proved by the PMR, which clearly shows that it wasn't suicide but murder committed by the accused husband along with respondent no.2 and 3, whereas, respondent no.4 and 5 removed material evidence available against accused Pardeep from the record. He further submits that the learned trial Court failed to consider that no reason has been given in the SIT challan for declaring respondent no.2 and 3 innocent since they are specifically named in the FIR. It is further contended that the learned trial Court wrongly recorded that allegations against respondent no.2 and 3 are general in nature as it is not within the domain of the Court to touch upon the merits of the case but to see if prima facie case is made out while deciding the application under Section 319 Cr.P.C. It is further contended that the learned trial Court has failed to appreciate the version of the petitioner-complainant from the FIR as well as his deposition before the Court as PW1 which clearly establish that there is sufficient material on record to summon respondent no.2 to 5 as additional accused in the case in hand.

5. Learned counsel for respondent no.2 and 3 contends that the power enumerated under Section 319 Cr.P.C. cannot be used merely on the

wishes of the complainant but requires cogent and clinching evidence and thus the application under Section 319 Cr.P.C moved by the petitioner has rightly been dismissed since it amounted to abuse of process of law.

ANALYSIS AND OBSERVATIONS

6. I have heard the learned counsel for the parties and perused the record of the case with their able assistance. It transpires that the case of the prosecution itself is of suicide and not of homicide. Further, the report submitted by the Crime Scene Investigation Team on 24.08.2021, prima facie, reveals the case to be of suicide as the door of the room where the alleged incident occurred was bolted from inside and the said room had a single door entry. The door of the room had to be broken and opened in the presence of the parents of the deceased. The said report further reveals that no signs of struggle were present in the room or on the body of the deceased. Moreover, the photographs referred to by the learned counsel for the petitioner do not prima facie suggest that it is a case of homicide.

7. Moreover, the abovesaid application under Section 319 Cr.P.C. was moved by the petitioner but not moved or endorsed by the concerned Public Prosecutor for the State and since it is a sessions trial case, the said application could not have been allowed. Even on merits, the applicant sought summoning of the family members, i.e., respondent no.2 and 3, under Section 304B/302 IPC and of the Police Officials who investigated the case, i.e., respondent no.4 and 5, under Sections 201, 202, 204, 120B, 166A, 167 read with Section 34 of IPC, however, the learned trial Court could not have taken cognizance of any fresh offence and the aforesaid persons could be tried only

for the offences qua which the cognizance has already been taken against other accused Pardeep, i.e., under Section 304B of IPC.

8. It is pertinent to discuss the perspicuous observations made by the Hon'ble Supreme Court in some of its recent judgements. Discussing the scope of Section 319 Cr.P.C., the Constitution Bench of Hon'ble Supreme Court in case titled **Hardeep Singh Vs. State of Punjab, SC 2014(1) RCR (Criminal) 623** has laid down that:

"105. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary 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.

106. 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."

9. Again, Hon'ble Supreme Court in the case of **Sagar Vs. State of Uttar Pradesh and another Criminal Appeal No. 397 of 2022 (Arising out of SLP(Crl) No.7373 of 2021)**, referring to **Hardeep Singh (supra)** laid down that:

"The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above 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."

10. Recently Hon'ble Supreme Court in case of **Juhru & Ors. Versus Karim & Anr. 2023 AIR (Supreme Court) 1160** observing the scope of section 319 Cr.P.C held that:

"It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a prima-facie case is sine quo non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 Cr.P.C., and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial Court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material is, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 Cr.P.C. ought not to be invoked."

11. In the case at hand, a perusal of the entire material on record reveals that there is no substantial evidence on record to establish that a prima facie case is made out against respondent no.2 to 5 to summon them as additional accused.

CONCLUSION

12. In view of the above discussion, this Court finds no reason to interfere with the above-mentioned impugned order dated 02.11.2021 passed

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by learned Additional Sessions Judge, Charkhi Dadri. Hence, the present revision petition stands dismissed.

13. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

14. However, nothing observed in this order shall be construed as an expression of opinion by this Court and the learned trial Court is directed to decide the present case strictly in accordance with law, on its own merits.

(HARPREET SINGH BRAR)
JUDGE

09.04.2024
Ajay Goswami

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No