

230/1 IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

1.

CRR-2507-2022 (O&M)
Reserved on:- 09.02.2024
Date of Decision:- 20.02.2024

KIRAN AND OTHERS

... PETITIONERS

V/S

STATE OF HARYANA

... RESPONDENT

2.

CRR-106-2023 (O&M)

PARDEEP KUMAR AND OTHERS

... PETITIONERS

V/S

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Aman Pal, Advocate,
for the petitioners (in CRR-2507-2022).

Mr. Kamal Deep Sehra, Advocate
for the petitioners (in CRR-106-2023).

Ms. Mayuri Lakhanpal Kalia, DAG, Haryana.

Mr. Manvender Chauhan, Advocate,
for the complainant.

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HARPREET KAUR JEEWAN, J.

1. Since a common question of law and facts are involved, these cases are taken up together and being disposed of by a common judgment.

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2. Both the criminal revisions have been filed impugning the order dated 10.10.2022 passed by the learned Addl. Sessions Judge, Fast Track Court, Sonipat whereby the petitioners (Pardeep @ Sunny, Babli, Balvinder, Jasbir Singh, Parkashi, Ramdhan and Kiran) have been summoned with the aid of Section 319 Cr.P.C. as additional accused to face trial in case FIR No. 416 dated 11.10.2020 under Sections 304-B, 506, 34 IPC, registered at Police Station Ganaur, Sonapat.

3. As per the factual matrix in brief, the marriage of the Neeraj-daughter of the complainant was performed on 22.01.2018 with accused Shiv Bhagat and at the time of marriage, about 1 kg 500 gms gold, 5 Kg silver, Rs. 50 Lakhs in cash along with 3 diamond sets worth Rs. 50 Lakhs and a diamond ring worth Rs. 2 Lakh was given to the husband and his relatives. However, the accused Shiv Bhagat (husband) and Shalini were not satisfied with the said dowry articles and they have been assaulting, disturbing and demanding more dowry from the daughter of the complainant.

3.1 It is further alleged in the FIR that the present petitioners had been assaulting the daughter of the complainant (since deceased) and they had been threatening her on the phone that they would kill her. The petitioners namely Balbir (father-in-law), Sunny (brother-in-law), Pushpa @ Sonu (sister-in-law), Babli (sister-in-law) and Balwinder (brother-in-law) had been assaulting the daughter of the complainant and they had been threatening her over phone that they would kill her.

3.2 On 10.10.2020, the daughter of the complainant committed suicide and complainant received information through a telephonic call given by accused Balbir Singh, father-in-law of the deceased that she has committed suicide by hanging herself. The complainant reached there at about 8 O'clock

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and was informed that her daughter was hanging with the ceiling fan and the door of the room was closed.

3.3 After registration of the FIR, the spot was inspected in the presence of FSL team. Post-mortem of the deceased was conducted and the cause of death was opined as ante mortem hanging.

3.4 On 12.12.2020, accused Shiv Bhagat was arrested. The CCTC footage of the camera installed was taken into possession.

3.5 On 18.11.2020, accused Balbir Singh and Pushpa were arrested. Dowry articles were got recovered on the basis of the disclosure statement given by them.

4. Reserving the right to argue in other points, the learned counsel Sh. Aman Pal, Advocate who had appeared for petitioners (in CRR-2507-2022) contends that while passing the impugned order, the learned trial Court has observed that from the evidence of PW6, complainant, a *prima facie* case is made out against the petitioners under Section 304-B IPC, in alternate to under Section 302, 406, 506 IPC, which is contradictory to the decision of the Constitution Bench of Hon'ble the Apex Court in Hardeep Singh vs. State of Punjab and others (2014) 3 SCC 92, wherein guidelines have been laid down to summon the additional accused with the aid of Section 319 Cr.P.C.

5. It was further contended that in the final paragraph of the impugned order, while issuing the process to summon the present petitioners as additional accused, no sections have been mentioned under which the cognizance has been taken. Learned counsel for the petitioners further contends that the detailed report of investigating agency whereby the petitioners were declared innocent and the reasons recorded therein have not been considered by the learned trial Court. As such, the impugned order is

liable to be set aside.

6. Mr. K.D. Shera, counsel for the petitioner (in CRR-106-2023) contends that petitioner No.1 is residing at a distance of 40-50 Kms from the place of occurrence whereas petitioner Nos. 2 and 3 are residents of Bareilly, which is far away from the place of occurrence. Their presence at the place of occurrence is highly doubtful and this fact has not been considered by the learned trial Court while passing the impugned order.

7. Learned counsel for the State while referring the status report contends that fair investigation has been conducted. The investigating agency has acted in a unlawful manner on the basis of the available evidence.

8. It was further contended that during the investigation call detail records, tower location and CAF forms of the mobile phone of the persons named in the FIR, complainant and the deceased were taken into possession. The statement of the witnesses were recorded. Several persons have joined the investigation and facts of the case were verified by the higher officers. From the said verification, no evidence was found during investigation to the effect the arrest of the petitioners. As such, their names were kept in column no.2 of the challan.

9. Learned counsel for the complainant contends that all the petitioners were present at the time of alleged occurrence. There is a CCTV footage which has been collected during investigation and there are photographs available with the complainant as per which, the presence of all the petitioners is seen. As such, they have rightly been summoned by the learned trial Court to face trial.

10. I have considered the aforesaid contentions.

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11. As per the status-report filed by way of affidavit of Gorakh Pal, ACP, Ganaur, Sonipat, during investigation, no evidence was found against the petitioners to effect their arrest. As such, their names were kept in column no.2 of the challan/report under Section 173 Cr.P.C. which was presented before the learned trial Court against accused Shiv Bhagat, Balbir and Pushpa.

12. As per the recovery memo of CCTV footage pen drive (Annexure P-5, appended with CRR-2507-2022), only the accused Shiv Bhagat was seen along with the deceased going in the lane which leads to her matrimonial house at the time of commission of suicide by the deceased.

13. There is no suicide note left by the deceased. There are no photographs regarding the presence of the present petitioners at the spot.

14. The trial Court while passing the impugned order has summoned the petitioners as additional accused. After recording the statement of the complainant (Ashok), the trial Court summoned the petitioners by passing the impugned order on the basis of the application moved by Public Prosecutor under Section 319 Cr.P.C. Firstly, it is not mentioned under what provisions they have been summoned. Secondly, the trial Court has only relied upon the statements of the complainant recorded in the Court on 24.03.2022 when he appeared as PW-6 and mother factor was considered. At the time of passing the impugned order on the basis of evidence of PW-6 (complainant), the trial Court gave the following observations:-

“.....All the accused gave merciless beatings to his daughter and hanged his daughter on ceiling fan. Thus, from the evidence of PW-6 (complainant), a prima facie case under Sections 304-B of IPC in alternate under Sections 302, 406 and 506 of the Indian Penal Code is made out against accused Pardeep @ Sunny, Smt. Babli wife of Balvinder Singh, Balvinder

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Singh, son of Rajbir, Jasbir Singh, son of Dariyao Singh, Smt. Parkashi wife of Jasbir Singh, Ramdhan son of Polkhar and Smt. Kiran wife of Ramdhan, including present accused facing trial. It would be a prima facie material which would enable the court to decide whether power under Section 319 Cr.P.C. should be exercised or not. Sub-Section (1) of Section 319 Cr.P.C. itself provides that in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused have committed any offence for which such persons could be tried together with accused, the Court may proceed against such persons for offence which they appear to have committed.”

15. No doubt Section 319 Cr.P.C is the enabling section for summoning additional accused, if during an inquiry or trial, it appears from the evidence that any person not being accused has committed an offence for which he could be tried together with the accused, the trial Court can proceed against such persons for the offence which he appears to have committed. However, before proceedings further, the trial Court has to satisfy itself regarding the matter available on record to proceed against such person.

16. The Constitution Bench of Hon’ble the Apex Court in Hardeep Singh’s case (*supra*), has explained the scope of exercising powers by the Court under Section 319 Cr.P.C. and also regarding the nature of satisfaction required to invoke the powers under Section 319 Cr.P.C. The relevant portion reads 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.

(Emphasis supplied)

17. While referring questions No. 3 and 4 framed in the said case, the following observations were made by Hon'ble the Apex Court in the aforesaid case:-

"Whether the word "evidence" used in [Section 319\(1\)](#) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In [Dharam Pal's](#) case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under [Section 193](#) Cr.P.C. and the Sessions Judge need not wait till 'evidence' under [Section 319](#) Cr.P.C. becomes available for summoning an additional accused? [Section 319](#) Cr.P.C.,

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significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under [Sections 200, 201, 202](#) Cr.P.C.; and under [Section 398](#) Cr.P.C. are species of the inquiry contemplated by [Section 319](#) Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under [Section 319](#) Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the chargesheet. In view of the above position the word 'evidence' in [Section 319](#) Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

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Question No. IV Q.IV What is the nature of the satisfaction required to invoke the power under [Section 319](#) Cr.P.C. to arraign an accused? Whether the power under [Section 319 \(1\)](#) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under [Section 319\(4\)\(b\)](#) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under [Section 319](#) Cr.P.C. would be the same as for ?framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

(Emphasis supplied)

18. In view of the ratio of the aforesaid decision by the Constitution Bench of Hon'ble the Apex Court and keeping in view the facts of the present

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case, I am of the considered opinion that the trial Court has not recorded the satisfaction in terms of the said decision of Hon'ble the Apex Court while passing the impugned order, as such, the impugned order is liable to be set aside.

19. Both the revision petitions are accepted and the matter is remand back to the trial Court for passing a fresh order in terms of the ratio of the aforesaid decision of the Constitution Bench of Hon'ble the Apex Court in Hardeep Singh's case (*supra*).

20. The petitions stand dispose of.

21. Any pending miscellaneous application (s), if any, shall also stands disposed of.

20.02.2024

Janki/nitin

(HARPREET KAUR JEEWAN)

JUDGE

*Whether speaking/reasoned : Yes**Whether reportable : Yes*