

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

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**CRR-4871-2017
Reserved on : 03.11.2023
Pronounced on : 05.01.2024**

Geeta Devi and another**..... Petitioners**

versus

State of Punjab and another**..... Respondents****CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN**

Present: Mr. Rahul Deswal, Advocate
for the petitioners.

Mr. Tarun Aggarwal, Sr. DAG, Punjab.

Mr. R.S. Sekhon, Advocate
for respondent No.7.

PANKAJ JAIN, J.

1. Present petition is directed against order dated 17.10.2017 passed by Additional Sessions Judge, Fazilka allowing the application filed under Section 319 Cr.P.C. by the prosecution and summoning the present petitioners as additional accused in FIR No.156 dated 10.08.2015, registered for the offences punishable under Sections 365 and 342 of IPC (Sections 364-A, 302, 148 and 149 of IPC added later on), at Police Station Sadar Fazilka, District Fazilka.

2. FIR came into existence on the complaint made by Manjit Singh son of Makhan Singh alleging that:-

“On 03.08.2015, a telephonic call was received by his Joginder Singh from Ex.Sarpanch Daulat Ram resident of Sahilwala (Raj.) that since the land situated there is very cheap and to come here after

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arranging some amount. On the assurance of Daulat Ram, on 04.08.2015, his brother Joginder Singh went there along with cash amount of Rs 1.0 lac after informing his family. When his brother did not return home after about 4-5 days, then they enquired the matter and on 09.08.2015, telephone calls of his brother Joginder Singh were received from mobile no. 097728-93043 and 096101-06149 that he was in a trouble. It was also stated by Joginder Singh that he has been confined in one motor room in the fields and to come here by arranging Rs. 5,00,000/- for his release. It was also informed by Joginder Singh that 4-5 persons always remain with him and they did not allow him to go anywhere else. The same matter was repeated by Daulat Ram Sarpanch whose mobile phone was taped by them. Today (i.e. 10.08.2015) at about 10.30 am, again a telephone call of Sarpanch was received that your payment has not been received so far and if we want to save our brother, to come along with Rs 5.0 lacs, whereupon, they replied that they will come there, after selling the gold etc. and after borrowing money from their relatives. In this way, they were not having only suspicion, but they were sure that if they did not give money to Dalip Kumar as demanded by him, they will kill his brother, so action be taken against the aforesaid persons and his brother be got released. On the basis of this application, a case FIR under Sections 365, 342 of IPC was registered and investigation was handed over to ASI Ranjit Singh. On 12.08.2015, Inspector/SHO along with other police officials visited Sangria Mandi and upon telephonic call, complainant Manjit Singh along with Harnek Singh residents of village Ojhanwali and Mangat Singh son of Munsha Singh

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resident of Namdev Nagar, Fazilka met the police party, who told the Investigating Officer that Daulat Ram etc. who have demanded Rs. 5.0 lacs from them for the release of his brother have beaten up his brother Joginder Singh due to non-fulfill of their demand and due to his critical condition, they got admitted his brother Joginder Singh in National Nursing Home, Sangria Mandi where he succumbed to the injuries and they are coming along with dead body of his brother. Thereafter, offences under Sections 364-A, 302, 148, 149 IPC were enhanced. On 13.08.2015, post mortem of the dead body of Joginder Singh was got conducted.”

3. During the course of investigation, Krishan Lal Tanda, Geeta Devi, Madan Lal, Rajinder Kumar @ Raju were found innocent and were placed in column No.2 of the report under Section 173 Cr.P.C. Complainant Manjit Singh PW-5 in his deposition stated as under:-

“He along with Manga Singh, Manjit Singh, Ramandeep, Harnek Singh along with Fazilka police went to village Sahliwala in search of his brother Joginder Singh in the house of Daulat Ram accused, where Madan Lal, Geeta Devi wife of Daulat Ram and Rajinder Kumar mistry were also present and they asked them to meet them with Joginder Singh, when Geeta Devi made a mobile call to Joginder Singh and they talked with Joginder Singh on mobile phone, on which, he had narrated that he has been confined in one room of electric motor and 5-6 persons are guarding him. PW-5 further stated that thereafter, they asked Geeta Devi to hand over Joginder Singh to them, whereupon, Geeta Devi declared that “you should give us Rs. 5,00,000/- otherwise we will kill Joginder Singh”.

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4. Having heard counsel for the parties and after going through records of the case, in report under Section 173 Cr.P.C., the investigating agency has exculpated the petitioners only observing as under:-

“During investigation, no sufficient evidence was found against the accused Geeta Devi, Madan Lal and Rajinder Kumar alias Raju in this case therefore all three of them will be declared innocent. The investigation of accused Daulat Ram and Pardeep Kumar above said is completed and nothing is pending.”

5. The initial version which has been reproduced hereinabove shows that the only allegation is against Daulat Ram. The allegation against the proposed accused i.e. the petitioners is only a bald allegation that Madan Lal, Geeta Devi wife of Daulat Ram and Rajinder Kumar @ Raju Mistri are also involved in the commission of offence without attributing any role to them. The law with respect to exercise of jurisdiction under Section 319 Cr.P.C. stands well laid down by Constitution Bench in the case of *Hardeep Singh vs. State of Punjab*, reported as **2014(3) SCC 92**, observing as under:-

“95. In *Suresh v. State of Maharashtra*, 2001(2) RCR (Criminal) 278, this Court after taking note of the earlier judgments in *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya*, 1991(1) RCR (Criminal) 89 and *State of Maharashtra v. Priya Sharan Maharaj*, 1997(2) RCR (Criminal) 634, held as under :

"9.....at the stage of Sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their

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face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction." (Emphasis supplied)

96. Similarly in ***State of Bihar v. Ramesh Singh, AIR 1977 Supreme Court 2018***, while dealing with the issue, this Court held :

".....If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial....."

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105. In ***Sohan Lal & Ors. v. State of Rajasthan, 1990(3) RCR (Criminal) 610 : (1990)4 SCC 580***, a two-Judge Bench of this Court held that once an accused has been discharged, the procedure for enquiry envisaged under Section 398 Cr.P.C. cannot be circumvented by prescribing to procedure under Section 319 Cr.P.C.

106. In *Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors., 1983(1) RCR (Criminal) 73*, this Court held that if the prosecution can at any stage produce evidence which satisfies the court that those who have not been arraigned as accused or against whom proceedings have been quashed, have also committed the offence, the Court can take cognizance against them under Section 319 Cr.P.C. and try them along with the other accused.”

6. Thus, merely for the reason that the petitioners have been named by the complainant, the power under Section 319 Cr.P.C. cannot be exercised unless and until the evidence on record satisfies ‘test of more than *prima facie* case’.

7. Consequently, the present revision petition is allowed. Impugned summoning order dated 17.10.2017 is hereby ordered to be set aside.

(PANKAJ JAIN)
JUDGE

05.01.2024
Dinesh

Whether speaking/reasoned	Yes
Whether Reportable :	No