

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRR No.2855 of 2023
Date of decision: 15.01.2024

Virender Singh ... Petitioner

Vs.

State of Haryana and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Amit Choudhary, Advocate,
for the petitioner.

MANISHA BATRA, J.

1. The petitioner herein is seeking quashing of order dated 18.07.2023 as passed by the Court of learned Additional Sessions Judge, Hisar whereby an application for summoning three persons namely, Siri Parkash, Sheela Devi and Sheetal as additional accused in Sessions Case No.47 of 2019 titled as State v. Nafe Singh arising out of FIR No.104 dated 07.05.2019 registered under Section 306 read with Section 34 of IPC at Police Station Hansi Sadar, District Hansi, had been dismissed.

2. The facts relevant for the purpose of disposal of this petition are that the aforementioned FIR had been registered on the basis of

complaint submitted by the complainant Virender Singh that his sister Aneeta who was married with the accused Nafe Singh about 20 years back, had died a suicidal death on 07.05.2019 and her death was abetted by her husband and the above named three persons who are brother, sister-in-law and daughter of brother respectively of Nafe Singh. During investigation, the accused Nafe Singh had been arrested whereas the above named three persons had been found to be innocent and had not been arrested and challaned. The challan was presented as against accused Nafe Singh who is facing trial under Section 306 of IPC. After recording statement of the complainant in chief, the complainant/prosecution had moved an application for summoning the above named Siri Parkash etc. as additional accused which was dismissed by the learned trial Court vide the impugned order.

3. It is submitted in the revision petition and learned counsel for the petitioner has argued that the impugned order is not sustainable in the eyes of law and is liable to be set aside as ample evidence in the form of testimony of the petitioner had appeared on the record of the trial Court to prove that the proposed additional accused were also involved in abetting the suicide of his sister. They were specifically named in the FIR. The challan report was filed against the accused already arraigned only and the proposed accused were wrongly declared to be innocent. The learned trial Court without considering all these facts, had erred in dismissing the application. Therefore, he has urged that the present revision petition deserves to be allowed and the above named three

persons are liable to be arraigned and summoned as additional accused to face trial along with the accused Nafe Singh already arraigned.

4. I have heard learned counsel for the petitioner at considerable length and have carefully gone through the material which has been placed on record.

5. Section 319 of Cr.P.C. 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 Cr.P.C. 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 that 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 un rebutted, would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 of Cr.P.C.

6. Reference can also have made to a recent pronouncement of Hon'ble Supreme Court cited as **Sagar Vs. State of UP and another**, (2022) 6 SCC 389 wherein the Apex Court observed as under:-

“ 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 notice 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....”

7. It is also well settled proposition of law that an order under Section 319 of the Cr.P.C. should not be passed only because the first informant or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be assigned by the Court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. The evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction and for this purpose, the Courts are required to apply stringent tests, one of such tests being

whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

8. On applying the above discussed principle of law to the peculiar facts and circumstances of the present case, this Court is of the considered opinion that the learned trial Court committed no illegality in dismissing the application filed by the petitioner. No doubt, the proposed accused were named in the FIR but a bare perusal of the contents of the same reveals that the only allegations that had been levelled against them were that once the accused already arraigned had extended beatings to the victim along with the proposed accused when Panchayat was convened for the third time. Neither the details of date etc. of the said Panchayat had been mentioned in the FIR nor in his sworn testimony, the present petitioner stated so and he simply stated that it was in connivance with the proposed accused that the main accused had committed the murder of his sister whereas the victim is proved to have died a suicidal death. The proposed accused had been found to be innocent after conducting thorough investigation by the police and their names were then kept in Column No.2 of the challan report. No evidence what to say some stronger evidence of such nature has come on record in the form of testimony of the petitioner on the basis of which possibility of complicity of the proposed accused in commission of the subject offence can be presumed. The allegations as levelled against them are general and vague in nature. Casual reference of their names that they had connived with the main accused already arraigned or by saying that beatings were extended

by them at their behest without referring to the part specifically attributed to them, would not justify taking any cognizance against them in my opinion especially keeping in view that in such like matters, there is a tendency to involve all the family members of the household by the side of the victim. In the absence of any specific instances of the involvement of the proposed accused in the crime for which the accused Nafe Singh is facing trial, I do not find any reason to take a view other than the one that had been taken by the learned trial Court. Accordingly, finding no ground to interfere, the petition is dismissed.

15.01.2024

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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No