

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-677-2025 (O&M)

Decided on 19.03.2025

Ganesh Kanojia

... Petitioner

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Aayush Gupta, Advocate for the petitioner

Mr. Jaspal Singh Guru, AAG Punjab

Sandeep Moudgil, J.

(1). This petition under Section 442 of BNSS has been filed by the petitioner seeking to quash the impugned order dated 17.12.2024 passed by Special Judge, Ludhiana whereby an application under Section 358 BNSS (erstwhile 319 CrPC) filed by the petitioner has been rejected seeking summoning of respondents No.2 to 5 as additional accused in case FIR No.131 dated 07.10.2018 under Sections 302/365/34 IPC, registered at Police Station Tibba, Ludhiana.

(2). Learned counsel for the petitioner contends that pursuant to filing of CRM-M-28228-2021 by the petitioner, this Court vide order dated 30.09.2024 (Annexure P4) allowed him to be re-examined as PW2 and it is thereafter that the petitioner specifically named the private respondents, who being neighbourers, kidnapped the younger son of the petitioner, namely, Ansh and killed him. It is submitted that the police wantedly did not record the above said version of the petitioner and filed challan against his daughter.

(3). It is argued that after re-examination of the petitioner as PW2, an application under Section 358 BNSS was filed for summoning the private

respondents as additional accused, however, the trial court did not appreciate the factual aspect as also the fact that the petitioner had specifically named the role of respondents No.2 to 5 and their collusion in kidnapping and thereafter killing her son.

(4). Heard learned counsel for the parties.

(5). A perusal of the impugned order dated 17.12.2024 would show that the petitioner-complainant had initially appeared in the witness box on 06.06.2019 as PW2 and had supported the case of the prosecution and held his daughter Renu Kanojia to be responsible for the death of his son. The petitioner thereafter moved an application under Section 311 CrPC for getting himself re-examined which was declined as a result of which, he approached this Court in CRM-M-28228-2021 whereby, this Court allowed her to be re-examined. Thereafter, the petitioner, on his re-examination as PW2 on 06.06.2019, made a statement distinct from that of what he made on the earlier occasion, freshly naming Jaspal Bawa, his wife Raj Rani, son Love Bawa and daughter Heena Bawa – respondents No.2 to 5. The conclusion drawn by the trial court is reproduced as under:-

“The complainant P.W2 Ganesh Kanojia has given entirely different statement in his re-examination by leveling allegations against Jaspal Bawa, his wife Raj Rani, son Love Bawa and daughter Heena Bawa against whom the present application has been filed.

The persons are not to be summoned as an accused merely on the statement of the witness. The courts are required construe the entire record. In this case the complainant Ganesh Kanojia was initially examined on 6.6.2019 wherein he has not stated anything against the persons sought to be summoned as additional accused.

Subsequently, he was recalled and while recording his statement he has named other persons who are strangers to the case as an accused for the commission of offence. There is no similarity between both the statements given by complainant Ganesh Kanojia.

7. *So from the perusal of the statement of the complainant and the original complaint and statement recorded in the Court and statement of other witnesses and documents placed on file, it is clear that there is no sufficient evidence against the persons sought to be summoned as additional accused which can prove that they can be tried along with the accused who is already facing the trial. Moreover, no satisfactory explanation has come on record as to why the complainant has given different versions. So, when there is no sufficient evidence at this stage, the application is without merit and same stands dismissed. However, nothing expressed herein shall have any bearing on the merit of the case.” The trial court rightly emphasized that accused individuals can only be summoned if there is substantial evidence on record demonstrating their involvement in the offense. This evidence must exceed a prima facie case, which is typically considered during the framing of charges, but falls short of conclusive proof that would lead to a conviction if left unrebutted.*

(6). A perusal of the above order would show that that the trial court rightly made a comparative distinction between the two statements made by the petitioner on 06.06.2019 vis-à-vis 05.10.2024 and found that the respondents No.2 to 5 were strangers and did not at all figure even remotely at the time of making his first statement. True it is that the loss of his son suffered by the petitioner being a father is irretrievable still this Court cannot be oblivious of the overall sequence of events and the broad canons of law is equally applicable be it a victim or the accused.

(7). In the absence of material evidence, the court should refrain from exercising its power under Section 358 BNSS, for, the accused person can be summoned provided there is concrete evidence indicating his/their complicity. In this case, besides the complainant's statement, there is no material evidence on record suggesting the involvement of the proposed accused in the commission of the offense.

(8). In view of the above discussion, there is no legal infirmity or irregularity in the order dated 17.12.2024 passed by the trial court. Therefore, this petition being devoid of merits stands dismissed.

(9). Ordered accordingly.

19.03.2025
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No