
(2004) 02 P&H CK 0135
In the Punjab And Haryana At Chandigarh
Case No : Criminal R. No. 1649 of 2003

Balwinder Kaur @ Baby

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 02-02-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Penal Code, 1860 (IPC) — Section 313

Citation : (2004) 9 CriminalCC 346 : (2004) 1 RCR(Criminal) 1006

Hon'ble Judges : A.K. Goel, J

Bench : Single Bench

Advocate : J.B.S. Gill and Mr. Rajeev K. Takkar, DAG, Punjab, for the Appellant;
Rajiv K. Takkar, DAG, Punjab, Mr. Rajiv Kapila and Ms. Satpreet Grewal, for the Respondent

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This petition has been filed against order of summoning u/s 319 Cr.P.C. The petitioners have been summoned to face trial under Sections 376/302/313 IPC.

2. The case of the prosecution is that Amanjit Alias Vicky, aged 19/20 years started vomiting on the night intervening 15/16.4.2002 and died at 1.30 a.m. She left a suicide-note to the effect that Kirpal Chand had called her to her (his?) house in connivance with her sister Inderjit Kaur alias Indu, petitioner herein, about four months before the death and had committed rape upon her. She was pregnant and Balwinder Kaur alias Baby, petitioner herein, who was also sister of the main accused Kirpal Chand gave her medicines for abortion. During investigation Inderjit Kaur and Balwinder Kaur were exonerated and the Magistrate committed the case against Kirpal Chand without taking cognizance against Balwinder Kaur and Inderjit Kaur, who were kept in column No. 2. However, they were directed to appear before the Sessions Court on the assumption that the Magistrate could not discharge them. The Court of Sessions

vide order dated 5.3.2003 discharged the petitioners on the ground that no cognizance had been taken against them and Court of Sessions could take cognizance only at the stage of Section 319 Cr.P.C. At a later stage, after examining Sat Pal, father of the deceased, an application for summoning the petitioners to face trial in accordance with Section 319 Cr.P.C. was filed which was opposed. Holding that there was sufficient evidence to arraign petitioners as accused to face trial along with Kirpal Chand, the trial court summoned them. Hence this petition.

3. Learned counsel for the petitioners contended that once the petitioners had been earlier discharged, Section 319 Cr.P.C. could have no application. Reliance is placed on *Sohan Lal and Others v. State of Rajasthan and Another*, 1990 CAR 286 (SC).

4. Learned counsel for the complainant submitted that judgment in *Sohan Lal's* case (*supra*) was distinguishable.

5. Question whether a person who is an accused and is discharged is covered by the expression "person not being the accused" as such a person though was accused at one stage ceased to be accused during the trial after being discharged. Precisely, this question was considered by a learned Single Judge of Gujarat High Court in *Mohanbhai Bhomraj Vs. The State of Gujarat and Others*, Some question was posed in para 9 and it was held that for proper interpretation, two stages of proceedings, namely, inquiry and trial, had to be kept in mind. If a person was accused at the stage of inquiry and was discharged and it could not be held that he continued to be accused at the stage of trial, and, thus, section 319 Cr.P.C. will apply in respect of a person who is earlier discharged. In *Joginder Singh and Another Vs. State of Punjab and Another*, it was held by the Apex Court that expressing a person who was dropped by the Police during investigation. In *Ratilal Bhanji Mithani v. State of Maharashtra*, AIR 1979 SC 94 (at page 101) it was observed that trial commenced with the framing of the charge.

6. Thus, a perusal of above case law shows that in view of the decisions of Apex Court in *Joginder Singh's* case and *Ratilal's* case (*supra*), a person against whom charge had not been framed cannot be said to be accused before the court during the trial and Section 319 Cr.P.C. applies. Similar view was taken by the learned Single Judge of Patna High Court in *Smt. Rama Sharma Vs. Pinki Sharma and Others*, it was held as under:-

26. Thus from all these it appears that even a person who has been discharged in any manner as mentioned above comes under the clutches of Section 319 Cr.P.C. if in the opinion of the Magistrate or the Sessions Judge it appears from the evidence during the trial after framing of the charge that the discharged accused has committed the offence. Thus the discharge does not give a benefit to a person even if the discharge has been affirmed by the superior Court or the charge against the said persons has already been quashed. Therefore following

the said observations of the Supreme Court referred to above and the Full Bench and Division Bench cases of this Court and agreeing with the findings given by the learned Single Judge of the Gujarat High Court I, with great respect and regret, disagree with the above mentioned observations of the learned single Judge in the case of Radhe Shyam Mishra v. State of U.P. (1986 All LJ 1341) (supra) and I hold that the Court has got power to proceed u/s 319, Cr.P.C. against a person even if he has been discharged.

7. A learned Single Judge of this Court in Amarjit Singh alias Amba v. State of Punjab and Another, 1983 RCR 643 took the same view relying on the judgment of the Apex Court in Joginder Singh's case (supra). In view of judgment of the Hon'ble Judges in Joginder Singh's case(supra), which have been followed by Gujarat High Court in Mohanbhai's case (supra) Patna High Court in Smt. Rama Sharma's case (supra) and this Court in Joginder Singh's case (supra) that even after discharge an accused can be summoned u/s 319 Cr. P.C. I do not find any merit in the contention of the learned counsel for the petitioner. Moreover, in the present case there was no discharge on merits and in the order dated 5.3.2003 discharging the petitioners it was made clear that the matter will be considered again u/s 319 Cr.P.C. Relevant extract from the order is as under:-

...The prosecution would be at liberty to move application u/s 319 Cr.P.C. for summoning the accused Balwinder Kaur @ Baby and Inderjit Kaur @ Indu as soon as some material comes on the file against these accused....

8. Learned counsel for the petitioners also submitted that the case for summoning the petitioners was not made out. Even if two views are possible, in exercise of revisional jurisdiction, no interference is called for, but the petitioners will be at liberty to raise this contention before the trial Court.

There is thus, no merit in this revision petition and the same is dismissed.

It is made clear that this order will not be construed as expression of opinion on merits of the case.