
(2004) 02 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 272 of 2004

Tejwant Kaur @ Tejwinder Kaur and Another	APPELLANT
Vs	
State of Punjab	RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 306

Citation : (2004) 9 CriminalCC 354 : (2004) 2 RCR(Criminal) 264

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : S.K. Sood, for the Appellant; Baljeet K. Mann, D.A.G., Punjab, for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—This criminal revision has been filed for setting aside the order dated 22.11.2003 passed by the learned Additional Sessions Judge, Fatehgarh Sahib, vide which the three petitioners have been summoned as an additional accused u/s 319 Cr.P.C. to face the trial u/s 306 IPC.

2. The three petitioners are father-in-law, mother-in-law and brother-in-law of the deceased wife. In the instant case, FIR was lodged on 9.1.2000 against four accused u/s 306 IPC including the petitioners and one Sukhchain Singh, brother-in-law of the deceased. The said FIR was lodged on the basis of the complaint made by the mother of the deceased after 23 days of the death of her daughter, who died on 16.12.1999 by consuming some poisonous substance. In the complaint, it was stated that the daughter of the complainant was married to Kulwinder Singh about two years ago, who is serving in the Indian Navy and had gone to his place of posting after some days of his marriage. She occasionally visited the matrimonial home of her daughter who was residing at her in-laws house in village Landran. During the absence of the husband, the father-in-law, mother-in-law, brother-in-law and sister-in-law of her daughter used to harass her for bringing less dowry. They gave beatings to her daughter many times and

compelled her to bring more dowry. On 15.12.1999, her daughter came to village Landran and told that her mother-in-law, father-in-law, brother-in-law and sister-in-law were pressuring her to bring a sum of Rs. 50,000/-; and they had also threatened her that in case she did not bring the said amount, she would be done to death. Since there was no arrangement for the said amount, her daughter was sent back to her in-laws house with the assurance that her father would bring the amount on Sunday. On the next day, a telephonic message was received that her daughter Sukhwinder Kaur had taken some poisonous substance and was lying in the hospital where she had died on 16.12.1999.

3. The matter was investigated by the police. During the investigation, it was found that the deceased Sukhwinder Kaur did not die due to any harassment made by the members of her in-laws family nor any dowry was ever demanded. However, as per the investigation of the Deputy Superintendent of Police, it was found that Sukhchain Singh, brother-in-law of the deceased Sukhwinder Kaur misbehaved with her on 11.12.1999 at the time of marriage in village Chandva Kalan, due to which she felt insulted and consumed some poisonous substance and died herself. On the said report, the challan was only filed against the said Sukhchain Singh u/s 306 IPC and the three petitioners were found to be innocent and kept in column No. 2.

4. The prosecution, after examining the complainant, Nachhatter Kaur as PW2 filed an application u/s 319 Cr.P.C. for summoning the petitioners as an additional accused. The said application was allowed by the learned Additional Sessions Judge vide order dated 22.11.2003 by passing the following order which has been impugned in the instant petition:-

Accused on bail with Sh. S.K. Sood, Adv. PW Nachhatter Kaur bound down for today is present and examined. Addl. P.P. for the State moved an application u/s 319 Cr.P.C. for summoning Gurmit Singh, Shamsher Kaur and Tejwant Kaur as they have been named by PW-2 Nachhatter Kaur in her examination-in-chief because they have taken active participation in the commission of the offence. In view of the law laid down by the Hon'ble Supreme Court of India with regard to summoning of the accused shown in column 2 of the report u/s 173 Cr.P.C. this application of the prosecution is allowed. Gurmit Singh, Shamsher Kaur and Tejwant Kaur resident of village Lohakheri are ordered to be summoned to face trial u/s 306 IPC for 13.12.03.

5. Learned counsel for the petitioner contended that the learned trial Court has committed grave illegality while summoning the petitioners as an additional accused, without applying its mind, in a haste. On 22.11.2003, the statement of the complainant Nachhatter Kaur was recorded on the same date; the prosecution filed the application u/s 319 Cr.P.C. for summoning the additional accused; and on the same date the learned Additional Sessions Judge passed the impugned order. The said order is totally non-speaking and cryptic. It has not been discussed at all in the said order as to on what evidence the petitioners were found to have been involved in the crime and have been ordered to be

summoned; and what offence was made out against them. Prior to the examination-in-Chief of Nachhatter Kaur as PW2, the prosecution examined AS1 Naseeb Singh as RW1 on 31.5.2003. In his evidence, he has produced the copy of the statement of Gurmit Singh, father of the deceased, which was entered into DDRNo.25 dated 16.12.1999 as Ex.PA. In the said statement, it was stated by the father of the deceased that the alleged incident was accidental in nature and none of the members of the in-laws family of his daughter was involved in the crime. This witness has also placed on record a Panchayatnama which was executed on 16.12.1999 by respectable of village Landran as well as village Lohakheri attested by the Sarpanch and also attested by the said witness in which it has been mentioned that none of the residents of both the villages had received any complaint from the deceased that she was being harassed by her in-laws for bringing more dowry. All the persons who had signed the aforesaid Panchayatnama were fully satisfied that the death of Sukhwinder Kaur was accidental and due to taking of wrong pills for headache and nobody was at fault.

6. The learned counsel for the petitioners submitted that in her statement made by Nachhatter Kaur before the Court, she has only levelled general and vague allegations against all the accused. He further submitted that the learned trial Court before passing the summoning order did not take into consideration the evidence available on the record, as examined by the prosecution for summoning the petitioners in the instant case. Therefore, the said order is liable to be set aside. Learned counsel for the petitioners also submitted that all the petitioners have been summoned to face the trial u/s 306 IPC whereas from the bare perusal of the statement of Nachhatter Kaur before the Court, no offence u/s 306 IPC was made out as she nowhere stated that the petitioners abetted the commission of the said suicide. Except the statement of Nachhatter Kaur, there is no other evidence on the file to pass the impugned order summoning the petitioners to face the trial u/s 306 IPC.

7. On the other hand, learned counsel for the respondent-State submitted that the statement given by the complaint Nachhatter Kaur is sufficient to summon the petitioners as an additional accused.

8. After hearing the learned counsel for the parties and perusing the record of the case, in my opinion, this petition deserves to be allowed. The legal position regarding summoning an additional accused to face the trial u/s 319 Cr.P.C. is well settled. The basis requirement for invoking this Section, as held by the Hon'ble Supreme Court in Michael Machado & Anr. v. Central Bureau of Investigation, 2000 (2) RCR (Cri) 75 is that it should appear to the Court from the evidence collected during the trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the Court entertained some doubt from the evidence about the involvement of another person in the offence. In other words, the Court must have reasonable satisfaction from the evidence already collected regarding two

aspects. First is that the other person has committed an offence and second is that for such offence that other person could as well as tried along with the already arraigned accused. But it always remains the discretion of the Court as the legislation has used the words "the Court may proceed against such person". The discretionary power so conferred should be exercised by the Court only to achieve the criminal justice. It is not that the another person also with the offence. A judicial exercise is called for, keeping a conspectus of the case including the stage at which the trial has proceeded already and the quantum of evidence collected till then.

9. In *Dr. Sant Singh v. State of Punjab*, 2002 (2) RCR (Cri) 719, it has been held by this Court that the Court has to use the power u/s 319 Cr.P.C. sparingly and primarily to advance the cause of criminal justice but not as a handle at the hands of the complainant to cause harassment to the person who is not involved in the commission of the crime. Before exercising the discretionary power, the Court has to apply its mind on the evidence produced by the prosecution to reach the conclusion whether from the evidence it appears that the accused have committed the offence.

10. In the instant case, from the bare perusal of the impugned order it appears that the learned Additional Sessions Judge has not applied its mind at all. He has only observed that in her examination-in-chief, Nachhatter Kaur has named the petitioners for taking active participation in the commission of the offence, therefore, they have been summoned to face the trial. The trial Court has not taken into consideration the statement of ASI Naseeb Singh-RWI. This witness has placed on record various documents and proved them to be executed during the investigation by different persons. The statement and the documents do not involve the petitioners in the commission of the crime. Even in the statement of Nachhatter Kaur, the allegations against the petitioners are general in nature. Not only this, the petitioners have been summoned to face the trial as an additional accused u/s 306 IPC but there is no allegation in the statement of Nachhatter Kaur that the petitioners abetted or instigated the deceased to commit the suicide. The ingredients of Section 306 IPC are completely missing in the statement of the said witness. Before summoning a person as an additional accused, the Court has to satisfy that the summoned accused have committed the alleged crime. Even the statement of Nachhatter Kaur does not disclose the constitution of an offence u/s 307 IPC, then summoning of the accused to face the trial for that offence is totally unjustified. This Court in *Lajpat Rai v. State of Haryana*, 2002 (1) RCR (Cri) 280 has held that the pre-requisite for invoking the provisions of Section 319 Cr.P.C. is that evidence should disclose the commission of offence by the person who had not been arraigned as an accused for which he should be tried together with other accused. The key to the satisfaction of such a requirement is contained in the words "it appears from the evidence that any person not being an accused has committed an offence." The manifest significance of the word "appears" employed in this section by the Legislature is to cover both the stages envisaged under the provisions of Section 319 Cr.P.C. in

relation to the person who had not been earlier facing trial as an accused but such person must appear to have committed the offence so that he be tried together with other accused. Though these provisions had vested a discretionary power in the court but it being a judicial discretion has to be exercised in such a manner which would advance the cause of criminal justice. The Court is duty bound to see that these provisions are not used as a handle by a witness to bring another person in the area of trial without any acceptable basis brought forth in his statement. The Court has to be extra-cautious while exercising the discretion vested in it and apply the test that prima facie there is sufficient evidence to warrant conviction of the person to be summoned to face trial along with other co-accused.

In view of the aforesaid discussion, this petition is allowed and the order dated 22.11.2003 passed by the learned Additional Sessions Judge vide which the petitioners have been summoned as an additional accused to face the trial u/s 306 IPC, is set aside.