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

CRR-4075-2017

Date of decision: 15.01.2025

HARPREET SINGH

...Petitioner(s)

VERSUS

STATE OF PUNJAB AND ANOTHER

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Vaibhav Narang, Advocate
for the petitioner.

Mr. Davinder Bir Singh, Senior DAG, Punjab.

Mr. Rahul Bhargava, Advocate
for respondent No.2.

JASGURPREET SINGH PURI, J. (Oral)

1. The present revision petition has been filed for setting aside the impugned order dated 03.10.2017 passed by the learned Additional Sessions Judge, Amritsar on an application filed by the prosecution under Section 319 Cr.P.C. for summoning the petitioner as an additional accused, vide which the said application was allowed and the petitioner was directed to be summoned as an additional accused under Sections 304-B and 316 of the IPC and in alternative under Section 302 of the IPC to face the trial.

2. Learned counsel for the petitioner submitted that the trial pertaining to the other co-accused i.e. the brother and mother of the petitioner commenced and both of them have been convicted but so far as the present



petitioner is concerned, there was an interim order passed by this Court on 07.11.2017, wherein the learned trial Court was directed to adjourn the proceedings qua the petitioner and thereafter, the aforesaid order dated 07.11.2017 was clarified on 05.02.2018 that the proceedings against the other co-accused would continue and proceedings only qua the petitioner are stayed.

3. While giving the brief facts of the present case, learned counsel for the petitioner submitted that the aforesaid impugned order dated 03.10.2017 was absolutely erroneous and perverse and also not in consonance with the law laid down by a Constitution Bench of Hon'ble Supreme Court in **Hardeep Singh versus State of Punjab and others, 2014 (3) SCC 92** in this regard. He further submitted that an FIR was lodged on 28.08.2016 at Police Station Ramdas, District Amritsar Rural by the father of the deceased alleging that his daughter was married about 8-9 months ago with one of the co-accused, namely, Parminder Singh, who is the brother of the petitioner and after marriage, the aforesaid Parminder Singh, the petitioner and their mother had been harassing her for dowry and they have caused death of his daughter and the dead body of his daughter was lying on bed in the veranda and around her neck there were marks of hanging and her arms and body had also turned blue because of poisoning. He further submitted that there were three accused in the present case i.e. the petitioner, brother of the petitioner (husband of the deceased) and mother of the petitioner. He further submitted that when the trial pertaining to brother and mother of the petitioner commenced, the same culminated into a judgment of conviction against them and so far as the present petitioner is concerned, he is the elder brother, who is already married and



during the course of investigation, it was found by the police that the petitioner was not even present at the place of occurrence when the said offence was committed i.e. on 28.08.2016 because on 27.08.2016 he had gone to the residence of his in-laws at Village Pandher, which is about 30 kms. from Village Dhangai where the deceased had died.

4. Learned counsel for the petitioner further submitted that when an application under Section 319 Cr.P.C. was moved by the prosecution then it was moved on the basis of statement tendered by the complainant, who is the father of the deceased in which he had reiterated the allegations made in the FIR on the basis of which the prosecution moved an application under Section 319 Cr.P.C. for summoning the petitioner as an additional accused but when a detailed inquiry was conducted in this regard, it was found that on 27.08.2016 in the afternoon the petitioner had gone to his in-laws house at Village Pandher and in this regard, the detailed inquiry was conducted by the concerned SHO after visiting the aforesaid Village Pandher and by recording statements of as many as 6 inhabitants of the aforesaid Village, who stated that the petitioner was in Village Pandher from 27.08.2016 afternoon to 28.08.2016 morning. He also submitted that the incident in the present case had taken place early in the morning on 28.08.2016 as the incident was reported to the police at about 9:00 A.M. and therefore, the alleged occurrence may have taken place in the intervening night of 27.08.2016 and 28.08.2016.

5. Learned counsel for the petitioner also submitted that the aforesaid inquiry report of the concerned SHO is appended with the present petition as Annexure P-4 which is very clear with regard to the detailed inquiry being



conducted, wherein the petitioner was exonerated. He further submitted that not only the recording of the statements of the inhabitants of Village Pandher but also the tower location of the mobile of the petitioner was also matched and it was found that the petitioner was found to be at Village Pandher, which also falls in Amritsar District and his phone was not functional from 27.08.2016 to 28.08.2016 and in this way, it was on the basis of the evidence pertaining to the recording of statements of the inhabitants of village Pandher and also matching of the mobile tower location that the police came to the conclusion that the petitioner was innocent and therefore, he was exonerated and was not challaned and therefore, there was no justification for the prosecution to have even moved an application under Section 319 Cr.P.C. for summoning the petitioner as an additional accused.

6. Learned counsel for the petitioner further submitted that it is a settled law that whenever an application for summoning of an additional accused under Section 319 Cr.P.C. is to be considered by the competent Court/trial Court then the Court has to proceed in a very diligent and cautious manner and it cannot adopt casual approach. He referred to the judgment passed by a Constitution Bench of Hon'ble Supreme Court in *Hardeep Singh's case (Supra)*, whereby law has been settled and it has also been held that for deciding an application under Section 319 Cr.P.C., not only a *prima facie* case is to be seen but rather 'more than *prima facie*' case has to be seen because it affects the liberty of an individual whose rights are being considered by the competent Court/trial Court, whereas the parameters laid by a Constitution Bench of Hon'ble Supreme Court in



Hardeep Singh's case (Supra) have not been followed by the learned trial Court.

7. To substantiate his arguments further, he referred to the impugned order dated 03.10.2017, whereby it was so observed by the learned trial Court that on the inquiry being conducted, it was found that from 27.08.2016 to 28.08.2016, the petitioner was at Jalandhar and the mobile location tower was also at 'Jalandhar', whereas the aforesaid finding is absolutely contrary to the record and the inquiry report (Annexure P-4). He further submitted that in the inquiry report it was so observed by the concerned SHO that the petitioner was at his in-laws house at Village Pandher, which is about 30 kms. away from the place where the occurrence had taken place, whereas there was no mention at all of 'Jalandhar' and 'Jalandhar' is a different District and is at much more distance from Amritsar. He further submitted that the aforesaid finding of the learned trial Court was contrary to even the inquiry report (Annexure P-4) and was also against the record and therefore, the aforesaid impugned order which has been passed was without due application of mind.

8. While further referring to the aforesaid impugned order, he submitted that there is another observation by the learned trial Court while deciding the aforesaid application under Section 319 Cr.P.C. that no statement of any person was recorded who had seen the petitioner at 'Jalandhar'. However, on the other hand, a perusal of the inquiry report (Annexure P-4) would show that the statements of 6 residents of Village Pandher were recorded and there was no question of recording of any statement at 'Jalandhar' which was irrelevant and therefore, the aforesaid second finding is also totally against



the record, perverse and without any basis. He further submitted that on these two findings, the application under Section 319 Cr.P.C. was allowed and since the findings are absolutely against the record and a result of non-application of mind, the aforesaid impugned order being contrary to the record is liable to be set aside.

9. Learned counsel for the petitioner also submitted that a perusal of the aforesaid impugned order would show that there is no observation as to how the learned trial Court has come to the conclusion and on what basis any such conclusion has been drawn that there is more than *prima facie* case made out so as to allow the application for summoning the petitioner as an additional accused under Section 319 Cr.P.C. and therefore, the aforesaid impugned order is also liable to be set aside being contrary to the established principles of law laid down by a Constitution Bench of Hon'ble Supreme Court in **Hardeep Singh's case (Supra)**. He further submitted that the petitioner is a married person and is elder to his brother, who has been convicted and his plea of *alibi* was duly established by the police and in case there was any contrary proof or any contrary observation or any further contrary evidence or material on record pertaining to the plea of *alibi* then definitely the learned trial Court could have proceeded against him under Section 319 Cr.P.C. but there is no such finding material or any observation or any evidence with regard to the same, which is contrary to any plea raised by the petitioner and therefore, the aforesaid impugned order dated 03.10.2017 may be set aside.

10. On the other hand, Mr. Davinder Bir Singh, Senior DAG, Punjab submitted that the prosecution moved an application under Section 319 Cr.P.C.



on the basis of statement made by the complainant, who is the father of the deceased, wherein he reiterated that direct role was attributable to the petitioner in the FIR and in the statement.

11. Learned counsel for respondent No.2 has opposed the grant of the relief as so claimed by the learned counsel for the petitioner on the ground that a perusal of the FIR and the statement, which was made by the complainant before the learned trial Court would clearly show that the petitioner along with his brother and mother had been harassing the daughter of the complainant for a long time before her death and consequently, the aforesaid offence of murder was committed by strangulation and also by giving poison and consequent upon the same, the brother of the petitioner and his mother have since been convicted and so far as the present petitioner is concerned, since there was an interim order passed by this Court as aforesaid, the trial qua him could not commence and the impugned order which has been passed by the learned trial Court is a well reasoned speaking order and therefore, the present petition is liable to be dismissed.

12. I have heard the learned counsels for the parties.

13. It is a case where the petitioner has been summoned as an additional accused by the learned trial Court for facing the trial under Sections 304-B and 316 of the IPC and in alternative under Section 302 of the IPC on the basis of an application which was filed by the prosecution under Section 319 Cr.P.C. In the FIR, no doubt the allegations have been made against the petitioner and also against his brother and mother. The deceased is the wife of the brother of the petitioner, namely, Parminder Singh. The brother and mother



of the petitioner have been convicted, whereas so far as the present petitioner is concerned, the trial qua him was stayed by this Court vide order dated 07.11.2017 and also dated 05.02.2018, whereby the earlier order was clarified. Before proceeding further, the law pertaining to the consideration of application under Section 319 Cr.P.C. by the learned trial Court has to be considered.

14. A Constitution Bench of Hon'ble Supreme Court in **Hardeep Singh's case (Supra)** held as under:-

“105. Power under Section 319 Cr.P.C is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. 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 evidence led before the Court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold 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 stronger evidence than mere probability of his complicity. The test that 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 unrebutted would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C the purpose of providing of “it appears from the evidence that any person not being the accused has



committed any offence” is clear from the words “for which such person could be tried together with the accused”. The words used are not “for which such person could be convicted”. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C to form any opinion as to the guilt of the accused”.

15. It is a settled law that whenever the learned trial Court is to consider any application for summoning of any accused under Section 319 Cr.P.C. as an additional accused then the learned trial Court has to proceed with abundant caution and in a reasonable manner based upon cogent and strong reason and by due application of mind, wherein it has to be established that there is more than *prima facie* case established against a person, who is sought to be summoned as an additional accused. Such an application cannot be considered in a light or casual manner.

16. A perusal of the inquiry report (Annexure P-4) on the basis of which the petitioner has been exonerated by the police would show that the concerned SHO had visited the Village of in-laws of the petitioner i.e. Village Pandher, wherein he recorded the statements of 6 inhabitants of the said Village and the mobile tower location was also compared on the basis of which it was concluded by the police that the petitioner was not present at Village Pandher when the offence was committed and he on the earlier day i.e. on 27.08.2016 had gone to his in-laws house alongwith his wife and therefore found to be innocent in the offence.

17. However, when the learned trial Court considered the application of the prosecution under Section 319 Cr.P.C. for summoning the petitioner as an



additional accused then the learned trial Court allowed the said application on two grounds. Firstly, that the police when exonerated the petitioner has not recorded the statement of anybody at 'Jalandhar'. The aforesaid finding on the face of it is totally erroneous and against the record. A perusal of the inquiry report (Annexure P-4) would show that the police rather went to the Village where the petitioner had gone alongwith his wife i.e. Village Pandher, which was his in-laws house and recorded the statements of 6 inhabitants of the Village and there was no question of recording of statement of any person in Jalandhar. It is not understandable as to how and from where the aforesaid place of Jalandhar has come into being since Jalandhar has got no connection at all with the present offence because both the Villages i.e. Village Dhangai and Village Pandher fall in District Amritsar. Therefore, *ex facie* the aforesaid observation made by the learned trial Court that the statements of inhabitants of Jalandhar were not recorded is perverse and against the record. Secondly, the trial Court observed that when the inquiry was conducted, it was found that from 27.08.2016 to 28.08.2016, the petitioner was at Jalandhar and his mobile tower location was also at Jalandhar. Again it is not understandable as to from where the aforesaid Jalandhar has come into picture. It appears that the learned trial Court has not applied its mind in a proper manner and has proceeded with deciding the application under Section 319 Cr.P.C. in a most casual manner. A further perusal of the aforesaid impugned order would show that nowhere satisfaction has been recorded by the learned trial Court as to whether the prosecution has been able to prove more than *prima facie* case, which has to be in consonance with the law laid down by a



Constitution Bench of Hon'ble Supreme Court in *Hardeep Singh's case (Supra)*.

18. Therefore, this Court is of the considered view that the impugned order dated 03.10.2017 is absolutely without application of mind and against the record and also contrary to the law laid down by a Constitution Bench of Hon'ble Supreme Court in *Hardeep Singh's case (Supra)*.

19. Consequently, the present petition is allowed. The impugned order dated 03.10.2017 passed by the learned Additional Sessions Judge, Amritsar, is hereby set aside.

(JASGURPREET SINGH PURI)
JUDGE

15.01.2025
Chetan Thakur

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No