

Court No. - 13

Case :- APPLICATION U/S 482 No. - 8882 of 2024

Applicant :- Vandana Mishra

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And 4 Others

Counsel for Applicant :- Jitendra Bahadur Singh

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania,J.

Heard Sri Jitendra Bahadur Singh, learned counsel for the applicant, Sri Vinay Kumar Sahi, learned AGA for the State of U.P. and perused the record.

By means of this application, the applicant has sought the following main relief(s):-

"The petitioner named above most respectfully begs to submit that for the facts, reasons and circumstances stated in the accompanying affidavit, this Hon'ble Court may kindly be pleased to quash the impugned Revisional order dated 21.08.2021, Bearing No. 223/2024, 'Vandana Mishra Vs State of U.P. & others', passed by Learned Additional Sessions Judge-III, Bahraich, as well as order dated 15.06.2024, passed by Learned Additional Civil Judge (J. D), Navrajit, in Case No. 12809/2020, 'State Vs Vinay Kumar Tiwari, arising out of Case Crime No. 36/2018, under section 498A, 323, 504, 506 I.P.C. and Section 3/4 Dowry Prohibition Act, Police Station - Mahila Thana, District - Bahraich.

It is further prayed that the further proceedings in the above mentioned case Bearing No. 223/2024, 'Vandana Mishra Vs State of U.P. & others', pending before the Learned Additional Sessions Judge-III, Bahraich, may kindly be stayed, during pendency of this petition."

Brief facts of the case in hand are as under:-

(i) An FIR was lodged on 05.04.2018 at about 14.44 hours by Vandana Mishra/applicant registered as FIR/Case Crime No. 0036/2018, under Sections-498-A, 323, 506 IPC and Section 3/4 D.P. Act at Police Station- Mahila Thana, District- Bahraich.

(ii) In the FIR, the informant/applicant implicated five persons namely Vinay Kumar Tiwari (husband), Uma Shankar Tiwari (father-in-law)/opposite party No. 2, Prabha (mother-in-law)/opposite party No. 5, Vinod Kumar (Jeth)/opposite party No. 3 and Rajesh Kumar (Jeth)/opposite party No. 4.

(iii) In this FIR, the informant/applicant levelled allegations against co-accused Vinay Kumar Tiwari (husband) and in regard to opposite party Nos. 2 to 5, the FIR reflects that in fact there is no allegation against these persons.

(iv) The Investigating Officer (in short "IO") after completion of investigation submitted the charge sheet only against husband of the applicant under Sections-498-A, 323, 325, 506 IPC and Section 3/4 D.P. Act.

(v) Before the magistrate/trial court the charges were framed against Vinay Kumar Tiwari (husband of the applicant) and upon denial, to establish its case, the prosecution produced the applicant, who has been examined as PW-1.

(vi) Before the trial court, the informant/applicant/PW-1 changed the entire story of the prosecution as narrated in the FIR. Before the trial court, she levelled allegations against opposite party Nos. 2 to 5.

(vii) On the basis of statement of applicant, an application under Section 319 Cr.P.C. was preferred by her for summoning of opposite party Nos. 2 to 5 namely Uma Shankar, Vinod Kumar, Rajesh Kumar and Prabha Devi to face the trial. The said application has been rejected by the Additional Civil Judge (Junior Division), Navsrajit, Bahraich (in short "trial court") vide order impugned dated 15.06.2024, relevant portion of which reads as under:-

"5. विदित होता है कि प्रस्तुत प्रकरण में अभियुक्त विनय कुमार तिवारी के विरुद्ध विवेचना व दाखिल आरोप पत्र के आधार पर धारा-498(A), 323, 325, 506 भा०द०सं० व 3/4 दहेज प्रतिषेध अधिनियम के तहत संज्ञान लिया गया है तथा दिनांक 16.03.2023 को अभियुक्त के विरुद्ध आरोप भी विरचित किया जा चुका है।

6. पत्रावली वर्तमान में अभियोजन साक्षी सं० (पी०डब्ल्यू०-1) वन्दना मिश्रा के जिरह हेतु नियत है। इस स्तर पर वादिनी मुकदमा श्रीमती वन्दना मिश्रा द्वारा प्रार्थना पत्र प्रस्तुत कर उमाशंकर तिवारी, प्रभा, विनोद कुमार व राजेश कुमार को धारा-319 द०प्र०सं० के तहत तलब करने की याचना की गयी है। वादिनी मुकदमा के कथनानुसार विवेचक द्वारा उपरोक्त व्यक्तियों के दबाव में आकर जान-बूझकर गलत तरीके से उपरोक्त व्यक्तियों का नाम विलोपित कर दिया गया है। विपक्षी द्वारा घोर विरोध किया गया।

7. यह विधि का सुस्थापित सिद्धान्त है कि धारा 319 द०प्र०सं० के अनुसार जहाँ किसी अपराध कि जांच अथवा विचारण के दौरान साक्ष्य से यह प्रतीत होता है कि ऐसा कोई व्यक्ति जो अभियुक्त नहीं है उसके द्वारा ऐसा कोई अपराध कारित किया गया है जिसके लिए उस व्यक्ति का अभियुक्त के साथ विचारण किया जा सकता है, वहां न्यायालय उस व्यक्ति के विरुद्ध उस अपराध के लिए जिसका उसके द्वारा कारित किया जाता प्रतीत होता है कार्यवाही कर सकता है। उक्त धारा के अधीन शक्ति वैवेकिक है एवं इन शक्तियों का प्रयोग दण्डिक न्याय प्राप्त करने के लिए किया जाना चाहिए। इस सम्बन्ध में माननीय सर्वोच्च न्यायालय द्वारा प्रतिपादित विधि व्यवस्था हरदीप सिंह बनाम पंजाब राज्य ए०आइ०आर० 2014 एस०सी०डब्लू० 667 का उल्लेख आवश्यक है। माननीय: सर्वोच्च न्यायालय द्वारा उक्त विधि व्यवस्था में यह विधिक सिद्धान्त प्रतिपादित किया है कि - "*Power under S. 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. Thus, 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 un rebutted, would lead to conviction.*"

8. माननीय उच्च न्यायालय इलाहाबाद द्वारा विधि व्यवस्था एस०के वर्मन उर्फ अजय कुमार वर्मन प्रति उत्तर प्रदेश राज्य व अन्य तथा नरेन्द्र कुमार मिश्रा प्रति उत्तर प्रदेश राज्य व अन्य 2014 (2) जे.आई.सी. 298 (इला.) में यह स्पष्ट रूप से प्राविधानित किया है कि धारा 319 द०प्र०सं० की शक्ति न्यायालय को तकनीकी रूप से अख्तियार करते हुए अमल में नहीं लायी जानी चाहिये। केवल कुछ साक्ष्य प्रस्तावित अभियुक्तगण के विरुद्ध उपलब्ध है, इस आधार पर धारा 319 द०प्र०सं० का प्रार्थना पत्र स्वीकार नहीं किया जाना चाहिये। न्यायालय को यह देखना अपेक्षित है कि क्या पत्रावली पर इतना साक्ष्य उपलब्ध है कि अभियुक्तगण की दोषसिद्ध संभव है।

9. इस स्तर पर उपरोक्त वर्णित धारा 319 द०प्र०सं० एवं विधि व्यवस्थाओं में प्रतिपादित सिद्धान्त के आलोक में इस तथ्य का अवलोकन किया जाना है क्या प्रकरण में उपलब्ध साक्ष्य के आधार पर अन्य व्यक्तियों जो की प्रथम सूचना रिपोर्ट में नामजद थे परन्तु जिनके विरुद्ध आरोपपत्र प्रेषित नहीं किया गया है, विचारण हेतु तलब करने योग्य है।

10. केस डायरी एवं पत्रावली पर प्रस्तुत समस्त प्रपत्रों तथा साक्ष्य के अवलोकन से विदित होता है कि प्रस्तुत प्रकरण में वादिनी मुकदमा द्वारा उमाशंकर तिवारी, प्रभा, विनोद कुमार व राजेश कुमार पर दहेज मांगने एवं प्रताड़ना करने के सामान्य आरोप लगाये गये हैं। वादिनी मुकदमा द्वारा किसी भी व्यक्ति की विनिर्दिष्ट भूमिका नहीं बतायी गयी है। वादिनी मुकदमा द्वारा मुख्य परीक्षा में दिये गये बयान में भी यह कथन किया गया है कि विदाई होने के 10-12 दिन उपरान्त ही वादिनी मुकदमा के ससुर, सास व जेठ द्वारा अतिरिक्त दहेज की मांग की जाने लगी, परन्तु इसके अतिरिक्त उपरोक्त व्यक्तियों के विरुद्ध वादिनी मुकदमा द्वारा कोई भी विशिष्ट कथन नहीं किया गया है। वादिनी मुकदमा द्वारा स्वयं कथन किया गया है कि वादिनी मुकदमा के पिता द्वारा अभियुक्त विनय कुमार तिवारी को मु० 96,000/- नगद दिये गये। मारने-पीटने का भी कथन अभियुक्त विनय कुमार तिवारी पर ही किया गया है तथा विशिष्ट घटनाओं से सम्बन्धित कथन भी अभियुक्त विनय कुमार तिवारी के बावत ही किया गया है। इस प्रकार जो भी कथन किये गये हैं, वह मात्र पति के विरुद्ध किये गये हैं। इस प्रकार वादिनी मुकदमा द्वारा मुख्य परीक्षा में ऐसा कोई विशिष्ट कथन नहीं किया गया है, जिससे कि अभियुक्त विनय कुमार तिवारी या अन्य अभियुक्तगण की घटनाक्रम में भूमिका परिलक्षित हो। यहाँ पर इस तथ्य का भी उल्लेख किया जाना आवश्यक है कि अन्य अभियुक्तगण के विरुद्ध किसी विशिष्ट भूमिका का उल्लेख न तो

प्रथम सूचना रिपोर्ट में है एवं न ही वादिनी मुकदमा के बयानों में है। माननीय उच्चतम न्यायालय द्वारा पारित कंसराज बनाम स्टेट आफ पंजाब 2000 (5) एस सी सी 207 ए आई आर 2000 एस सी 2324; मोंजू राय बनाम स्टेट आफ वेस्ट बंगाल (क्रिमिनल अपील नं०- 1717/2012) निर्णीत दिनांक 17.04.2014; गीता मेहरोत्रा व एक अन्य बनाम स्टेट आफ यू.पी. व एक अन्य, ए०आई०आर० 2013 एस०सी० 181 में व्यक्त किये गये मत व विधिक दृष्टांत के अनुसार यदि अभियुक्तगण के विरुद्ध मात्र मानसिक एवं शारीरिक प्रताड़ना किये जाने का सामान्य आक्षेप किया गया है एवं किसी विशिष्ट घटना का उल्लेख नहीं किया गया है तब परिवादिनी के समस्त ससुरालीजन को तलब किया जाना न्यायिक प्रक्रिया का दुरुपयोग होगा।

अतः मामले के तथ्य एवं परिस्थितियों के दृष्टिगत एवं वादिनी मुकदमा द्वारा दिए गए बयानों में मात्र साधारण रूप से अन्य अभियुक्तगण घटना में भूमिका होना कथन किया गया है। इस दशा में यदि इस स्तर पर भी अवधारित कर लिया जाए कि वादिनी मुकदमा द्वारा दिए गए बयान एवं अन्य साक्ष्य वाद के अन्तिम स्तर तक खण्डित नहीं होंगे, तब भी अन्य अभियुक्तगण के दोषी करार दिए जाने की संभावना सुदूर है। अतः न्यायालय के मत में अन्य व्यक्तियों को बतौर अभियुक्तगण तलब किया जाना न्यायोचित नहीं है। प्रार्थनापत्र निरस्त किये जाने योग्य है।

आदेश

प्रार्थना पत्र अन्तर्गत धारा-319 द०प्र०स० निरस्त किया जाता है। पत्रावली वास्ते जिरह पी०डब्ल्यू०-1 दिनांक 19.06.2024 को पेश हो।"

(viii) Challenging the order dated 15.06.2024, the applicant preferred a Criminal Revision No. 223/2024 (Vandana Mishra vs. State of U.P. and others), which has also been rejected by the order impugned dated 21.08.2024 passed by Third Additional District and Sessions Judge, Bahraich (in short "revisional court").

In the aforesaid background of the case, the instant application has been filed before this Court challenging the orders impugned dated 15.06.2024 and 21.08.2024.

Impeaching the orders impugned dated 15.06.2024 and 21.08.2024, learned counsel for the applicant says that the trial court also revisional court while rejecting the application of the applicant has not considered the law settled by the Hon'ble Apex Court on the issue in various pronouncements, as such, indulgence of this Court is required in the matter.

It is also stated that the evidence before the trial court ought to have been considered for the purposes of rejecting or allowing the application under Section 319 Cr.P.C. and in the instant case, the trial court while rejecting the application preferred by the applicant under Section 319 Cr.P.C. has not considered the statement of the applicant/victim recorded before it in its true spirit, as appears from the order dated 15.06.2024 nor the revisional court considered the same while dismissing the revision vide order dated 21.08.2024, inadvertently indicated as order dated 21.08.2021 in the prayer clause. As such, indulgence of this Court is required in the matter.

Learned AGA opposed the present application. He says that the orders impugned dated 15.06.2024 and 21.08.2024 are just and proper and are not liable to be interfered with by this Court.

Considered the aforesaid and perused the record.

The law on the issue is well settled. In view of the observations made by the Hon'ble Apex Court in the judgment passed in the case of **Hardeep Singh Vs. State of Punjab (2014) 3 SCC 92, Brijendra Singh and Others Vs. State of Rajasthan, (2017) 7 SCC 706, Rajesh and Others Vs. State of Haryana, (2019)**

6 SCC 368, Manjeet Singh Vs. State of Haryana & Ors., (2021) 18 SCC 321, Sukhpal Singh Khaira Vs. State of Punjab, (2023) 1 SCC 289, Yashodhan Singh and Others Vs. State of U. P. and Others, (2023) LiveLaw (SC) 576 : 2023 INSC 652, the trial Court while exercising the power under Section 319 Cr.P.C. is under obligation to consider the evidence recorded before it during trial as also the evidence received by it after cognizance is taken and before commencement of trial.

The Hon'ble Apex Court in the case of **Hardeep Singh (supra)** in para 78 observed that "the word "evidence" in Section 319 CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319 CrPC is to be exercised and not on the basis of material collected during the investigation". and thereafter in para 85 it has been observed that "in view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 CrPC. The "evidence" is thus, limited to the evidence recorded during trial." and subsequently, in the case of **Rajesh and Others (supra)** in para 6.8 held that "Considering the law laid down by this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] and the observations and findings referred to and reproduced hereinabove, it emerges that (i) the Court can exercise the power under Section 319 CrPC even on the basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till the cross-examination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC, provided from the evidence (may be on the basis of the evidence collected in the form of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial." and thereafter, in the case of **Manjeet Singh (supra)** observed as under:

"15. The ratio of the aforesaid decisions on the scope and ambit of the powers of the court under Section 319CrPC can be summarised as under:

15.1. That while exercising the powers under Section 319CrPC and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished.

15.2. For the empowerment of the courts to ensure that the criminal administration of justice works properly.

15.3. The law has been properly codified and modified by the legislature under CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law.

15.4. To discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished.

15.5. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial.

15.6. Section 319CrPC allows the court to proceed against any person who is not an accused in a case before it.

15.7. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency.

15.8. Section 319CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial.

15.9. The power under Section 319(1)CrPC can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208CrPC, committal, etc. which is only a pre-trial stage intended to put the process into motion.

15.10. The court can exercise the power under Section 319CrPC only after the trial proceeds and commences with the recording of the evidence.

15.11. The word "evidence" in Section 319CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents.

15.12. It is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319CrPC is to be exercised and not on the basis of material collected during the investigation.

15.13. If the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319CrPC and can proceed against such other person(s).

15.14. That if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under Section 319CrPC can be exercised.

15.15. That power under Section 319CrPC can be exercised even at the stage of completion of examination-in-chief and the court need not to wait till the said evidence is tested on cross-examination.

15.16. Even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the court is still not powerless by virtue of Section 319CrPC and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses).

15.17. While exercising the powers under Section 319CrPC the court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.

16. Applying the law laid down in the aforesaid decisions to the facts of the case on hand we are of the opinion that the learned trial court as well as the High Court have materially erred in dismissing the application under Section 319CrPC and refusing to summon the private respondents herein to face the trial in exercising the powers under Section 319CrPC. It is required to be noted that in FIR No. 477 all the private respondents herein who are sought to be arraigned as additional accused were specifically named with specific role attributed to them. It is specifically mentioned that while they were returning back, Mahindra XUV bearing no. HR 40A 4352 was standing on the road which belongs to Sartaj Singh and Sukhpal. Tejpal, Parab Saran Singh, Preet Samrat and Sartaj were standing. Parab Sharan was having lathi in his hand, Tejpal was having a gandasi, Sukhpal was having a danda, Sartaj was having a revolver and Preet Singh

was sitting in the jeep. It is specifically mentioned in the FIR that all the aforesaid persons with common intention parked the Mahindra XUV HR 40A 4352 in a manner which blocks the entire road and they were armed with the weapons.

17. Despite the above specific allegations, when the charge-sheet/final report came to be filed only two persons came to be charge-sheeted and the private respondents herein, though named in the FIR, were put/kept in Column 2. It is the case on behalf of the private respondents herein that four different DSPs inquired into the matter and thereafter when no evidence was found against them the private respondents herein were put in Column 2 and therefore the same is to be given much weightage rather than considering/believing the examination-in-chief of the appellant herein. Heavy reliance is placed on Brijendra Singh [Brijendra Singh v. State of Rajasthan, (2017) 7 SCC 706 : (2017) 4 SCC (Cri) 144] .

18. However none of DSPs and/or their reports, if any, are part of the charge-sheet. None of the DSPs are shown as witnesses. None of the DSPs are investigating officer. Even on considering the final report/charge-sheet as a whole there does not appear to be any consideration on the specific allegations qua the accused, the private respondents herein, who are kept in Column 2. Entire discussion in the charge-sheet/final report is against Sartaj Singh only.

19. So far as the private respondents are concerned only thing which is stated is: "During the investigation of the present case, Shri Baljinder Singh, HPS, DSP Assandh and Shri Kushalpal, HPS, DSP Indri found accused Tejpal Singh, Sukhpal Singh, sons of Gurdev Singh, Parab Sharan Singh and Preet Samrat Singh sons of Mohan Sarup Singh caste Jat Sikh, residents of Bandrala innocent and accordingly Sections 148, 149 and 341IPC were deleted in the case and they were kept in Column 2, whereas challan against accused Sartaj has been presented in the Court."

20. Now thereafter when in the examination-in-chief the appellant herein — victim — injured eyewitness has specifically named the private respondents herein with specific role attributed to them, the learned trial court as well as the High Court ought to have summoned the private respondents herein to face the trial. At this stage it is required to be noted that so far as the appellant herein is concerned he is an injured eyewitness. As observed by this Court in State of M.P. v. Mansingh [State of M.P. v. Mansingh, (2003) 10 SCC 414 : (2007) 2 SCC (Cri) 390] (para 9); Abdul Sayeed v. State of M.P. [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] ; State of U.P. v. Naresh [State of U.P. v. Naresh, (2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216] , the evidence of an injured eyewitness has greater evidential value and unless compelling reasons exist, their statements are not to be discarded lightly. As observed hereinabove while exercising the powers under Section 319CrPC the court has not to wait till the cross-examination and on the basis of the examination-in-chief of a witness if a case is made out, a person can be summoned to face the trial under Section 319CrPC.

21. Now so far as the reasoning given by the High Court while dismissing the revision application and confirming the order passed by the learned trial court dismissing the application under Section 319CrPC is concerned, the High Court itself has observed that PW 1 Manjeet Singh is the injured witness and therefore his presence cannot be doubted as he has received firearm injuries along with the deceased. However, thereafter the High Court has observed that the statement of Manjeet Singh indicates over implication and that no injury has been attributed to either of the respondents except that they were armed with weapons and the injuries concerned are attributed only to Sartaj Singh, even for the sake of arguments if someone was present with Sartaj Singh it cannot be said that they had any common intention or there was meeting of mind or knew that Sartaj would be firing. The aforesaid reasonings are not sustainable at all.

22. At the stage of exercising the powers under Section 319CrPC, the court is not required to appreciate and/or enter on the merits of the allegations of the case. The High Court has lost sight of the fact that the allegations against all the accused persons right from the very beginning were for the offences under Sections 302, 307, 341, 148 & 149IPC. The High Court has failed to appreciate the fact that for attracting the offence under Section 149IPC only forming part of unlawful assembly is sufficient and the individual role and/or overt act is immaterial. Therefore, the reasoning given by the High Court that no injury has been attributed to either of the respondents except that they were armed with weapons and therefore, they cannot be added as accused is unsustainable. The learned trial court and the High Court have failed to exercise the jurisdiction and/or powers while exercising the powers under Section 319CrPC.

23. Now so far as the submission on behalf of the private respondents that though a common judgment and order was passed by the High Court in Satkar Singh v. State of Haryana [CRR No. 3238 of 2018 reported as Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 sub nom Satkar Singh v. State of Haryana] at that stage the appellant herein did not prefer appeal

against the impugned judgment and order passed by the High Court in *Manjeet Singh v. State of Haryana* [Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 [Ed. : This also disposed of CRR No. 3238 of 2018 by a common judgment and order]] and therefore this Court may not exercise the powers under Article 136 of the Constitution is concerned the aforesaid has no substance. Once it is found that the learned trial court as well as the High Court ought to have summoned the private respondents herein as additional accused, belated filing of the appeal or not filing the appeal at a relevant time when this Court considered the very judgment and order in *Satkar Singh v. State of Haryana* [CRR No. 3238 of 2018 reported as *Manjeet Singh v. State of Haryana*, 2020 SCC OnLine P&H 2782 sub nom *Satkar Singh v. State of Haryana*] cannot be a ground not to direct to summon the private respondents herein when this Court has found that a prima facie case is made out against the private respondents herein and they are to be summoned to face the trial.

24. Now so far as the submission on behalf of the private respondents that though in the charge-sheet the private respondents herein were put in Column 2 at that stage the complainant side did not file any protest application is concerned, the same has been specifically dealt with by this Court in *Rajesh v. State of Haryana*, (2019) 6 SCC 368 : (2019) 2 SCC (Cri) 801] . This Court in the aforesaid decision has specifically observed that even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well as who were named in the FIR but not implicated in the charge-sheet has gone, in that case also, the court is still not powerless by virtue of Section 319CrPC.

25. Similarly, the submission on behalf of the private respondents herein that after the impugned judgment and order passed by the High Court there is much progress in the trial and therefore at this stage power under Section 319CrPC may not be exercised is concerned, the aforesaid has no substance and cannot be accepted. As per the settled proposition of law and as observed by this Court in *Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86], the powers under Section 319CrPC can be exercised at any stage before the final conclusion of the trial. Even otherwise it is required to be noted that at the time when the application under Section 319CrPC was given only one witness was examined and examination-in-chief of PW 1 was recorded and while the cross-examination of PW 1 was going on, application under Section 319CrPC was given which came to be rejected by the learned trial court. The order passed by the learned trial court is held to be unsustainable. If the learned trial court would have summoned the private respondents herein at that stage such a situation would not have arisen. Be that as it may, as observed herein powers under Section 319CrPC can be exercised at any stage from commencing of the trial and recording of evidence/deposition and before the conclusion of the trial at any stage.

26. In view of the above and for the reasons stated above, the impugned judgment and order [Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 [Ed. : This also disposed of CRR No. 3238 of 2018 by a common judgment and order]] passed by the High Court and that of the learned trial court dismissing the application under Section 319CrPC submitted on behalf of the complainant to summon the private respondents herein as additional accused are unsustainable and deserve to be quashed and set aside and are accordingly quashed and set aside. Consequently the application submitted on behalf of the complainant to summon the private respondents herein is hereby allowed and the learned trial court is directed to summon the private respondents herein to face the trial arising out of FIR No. 477 dated 27-7-2016 in Sessions Case No. 362 of 2016 for the offences punishable under Sections 302, 307, 341, 148 & 149IPC."

Having considered the facts of the instant case available on record including the reasons indicated in the orders under challenge dated 15.06.2024 and 21.08.2024, this Court finds that no interference is required in the orders passed by the court concerned under challenge dated 15.06.2024 and 21.08.2024. It is for the following reasons:-

(i) According to the observations made by the Hon'ble Apex Court in the case of ***Geeta Mehrotra and others vs. State of U.P. and others*** reported in (2012) 10 SCC 741, ***Kahkashan Kausar v. State of Bihar*** reported in (2022) 6 SCC 599 and ***Achin Gupta vs. State of Haryana and another*** reported in 2024 SCC OnLine SC 759, practice of implicating entire family in matrimonial cases has been deprecated.

(ii) The law says that for summoning of witnesses in exercise of power under Section 319 Cr.P.C., the trial court or any other court dealing with the matter, for summoning a person to face the trial, should come to the satisfaction to an extent that the evidence, if unrebutted, would lead conviction. ***[see: Paragraph 106 of Hardeep Singh vs. State of Punjab reported in (2014) 3 SCC 92.]***

(iii) In the instant case, vague and bald allegations have been levelled in the FIR as also before the trial court against opposite party Nos. 2 to 5 namely Uma Shankar (father-in-law), Vinod Kumar (Jeth), Rajesh Kumar (Jeth) and Prabha Devi (mother-in-law). As such, the evidence of PW-1, if goes unrebutted, would not lead conviction.

Having observed above, the instant application is ***dismissed***.

Order Date :- 1.10.2024

Arun/-