

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

Crl. Misc. No.M-25270 of 2009 (O&M)

Date of Decision: 25.08.2015

Darshan Singh & Ors.

.. Petitioners

Vs.

State of Punjab & Anr.

.. Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. Jasdeep Singh Gill, Advocate
for the petitioners.**

Mr. Deep Singh, AAG Punjab.

**Mr. Karan Bhardwaj, Advocate
for respondent No.2.**

ANITA CHAUDHRY, J.

FIR No.302 dated 18.10.2004 was registered under Sections 406 and 498-A IPC at Police Station Sadar, Jalalabad. Gianbir Kaur was married to Dilbagh Singh on 10.12.2001. Marriage was performed with pomp and show. The allegations were that the accused misappropriated the istridhan. It was further alleged that the accused were not satisfied with the dowry articles and started maltreating her and demand of a car was made. When the demand was not met, she was beaten and ultimately turned out of the matrimonial home.

On these broad allegations, the FIR was registered

and investigated. The investigating agency found all other persons named in the complaint innocent. They filed the challan only against the husband Dilbagh Singh.

At the trial, the complainant Gianbir Kaur appeared as PW1. After that an application under Section 319 Cr.P.C. was moved to summon the petitioners as additional accused. Vide order dated 30.03.2009 the application was allowed and the petitioners were summoned.

Aggrieved with the order, the petitioners preferred a revision petition before the Sessions Court which was dismissed.

Dis-satisfied with the same, the instant petition has been filed seeking quashing of summoning order and the order passed by the revisional Court dismissing their petition.

The petitioners' stand is that the Courts below had failed to apply the stringent tests and there was no new evidence against the petitioners and they were found innocent by the police and could not be summoned as additional accused.

In the reply filed on behalf of the State, it was admitted that the petitioners were found innocent during investigation. It was pleaded that the trial Court found

sufficient evidence to proceed against the petitioners.

The stand of the complainant is that the petitioners were specifically named in the FIR and were wrongly let off by the police and on the strength of statement of the complainant, they were rightly summoned to face trial.

I have heard learned counsel for the parties and have gone through the paper book very carefully.

It would be useful to refer to the authoritative pronouncement of the Supreme Court in **Hardeep Singh Vs. State of Punjab & Ors.** reported as **2014(3) SCC 92**, The Hon'ble Apex Court deliberated on the issue regarding the powers under Section 319 Cr.P.C. Dealing with the question regarding degree of satisfaction required for invoking the power under Section 319 Cr.P.C., numerous judgments were taken into account and it was observed:-

98. 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.

99. 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 un rebutted, 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 if '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."

In ***Krishnappa v. State of Karnataka, 2004 (4)***

RCR (Criminal) 678, the Court ruled that the power to summon an accused is an extraordinary power conferred on the Court and it should be used very sparingly and only if compelling reasons exist for taking cognizance against the person other than the accused.

The Apex Court in ***Sarabjit Singh and another v. State of Punjab and another*** reported as 2009(3) **RCR (Criminal) 388** observed as follows:-

"17. The provision of Section 319 of the Code, on a plain reading, provides that such an extraordinary case has been made out must appear to the court. Has the criterion laid down by this Court in Municipal Corporation of Delhi (supra) been satisfied is the question? Indisputably, before an additional accused can be summoned for standing trial, the nature of the evidence should be such which would make out grounds for exercise of extraordinary power. The materials brought before the court must also be such which would satisfy the court that it is one of those cases where its jurisdiction should be exercised sparingly. We may notice that in Y. Saraba Reddy v. Puthur Rami Reddy and Anr. [JT 2007 (6) SC 460], this Court opined:

"...Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates that evidence of witnesses given in Court..."

Similar view has been reiterated in the cases of **Asha Rani Vs. State of Punjab 2014(7) RCR(Crl.) 238, Suman Ashok Kumar Vs. State of Punjab 2012(4) CCR 115, Dalpreet Singh & Ors. Vs. State of Punjab & Ors. 2012(6) RCR(Crl.) 2315 and Sukkhu Raidas & Ors. Vs. State of U.P. & Anr. 2011(6) RCR(Crl.) 2582.**

It is apparent that for the purpose of forming an opinion to summon an additional accused, the Court must be satisfied that there exists an extra ordinary case for the exercise of jurisdiction. The case in hands needs to be analyzed in view of the law laid down referred to above.

In the instant case, the marriage had taken place on 10.12.2001. There is no serious dispute that respondent No.2 resided in the matrimonial home for a short period of one month. She got the FIR registered after two years of the marriage. The allegations in the FIR show that there are no specific allegation regarding demand of dowry or harassment in relation to the petitioners. No date or time had been mentioned as to when she was beaten up or maltreated by the petitioners. No MLR was produced. There are general allegations in the FIR that the complainant was harassed by the accused. The articles in respect of which misappropriation has been pleaded, could ordinarily be

termed as gifts given usually in marriage. Even otherwise, the petitioners cannot be termed as beneficiary to the alleged demand of car. The petitioners were found innocent by the police. No new fact, apart from the statement of complainant, was there to prima facie satisfy the sine qua non for summoning the petitioners as an additional accused. It appears that the complainant has levelled against the petitioners out of frustration and to widen the net. It is a settled proposition of law that an order under Section 319 Cr.P.C. should not be passed only because the first informant wishes to implicate some persons other than the accused. The trial Court overlooked the fact that there is a general tendency to rope in all the family members of the husband in such like cases and mere ipse dixit would not serve the purpose. On the basis of general allegations, the trial Court ought not to have exercised the powers under Section 319 Cr.P.C., which have to be exercised sparingly and only if compelling reasons exists for taking cognizance against the person(s) other than the accused. It requires much stronger evidence more than prima facie case.

In the considered opinion of this Court, the allegations against the petitioners are absurd and improbable and warrants interference in exercise of powers under Section 482 Cr.P.C.

In view of the above, present petition is allowed and impugned orders dated 30.3.2009 and 25.08.2009 and consequent proceedings emanating therefrom are quashed.

However, it is made clear that this Court has analyzed the material and evidence on record only in relation to the petitioners. The observations made are without prejudice to the case on merits qua the other accused.

August 25, 2015
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(ANITA CHAUDHRY)
JUDGE`