

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

**CRM-M No.36772 of 2013.
Date of decision: 06.01.2015.**

Sushila Sharma

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN.

Present: Mr. Kanwaljit Singh, Sr. Advocate
with Mr. Amandeep Singh, Advocate
for the petitioner.

Mr. Luvinder Sofat, AAG, Punjab
assisted by ASI Balraj Singh.

Mr. APS Deol, Sr. Advocate
with Mr. ADS Sukhija, Advocate
for respondent No.3.

JITENDRA CHAUHAN J. (Oral)

The present petition under Section 482 of the Code of Criminal Procedure has been filed by the petitioner, for setting aside the order dated 29.07.2013, passed by learned Additional Session Judge, SAS Nagar, Mohali, for summoning Sudesh Bhardwaj and Meenakshi as additional accused, in case FIR No.81 dated 03.10.2011, registered under Section 306 of Indian Penal Code, at Police Station Phase-XI, Mohali.

Learned senior counsel for the petitioner inter alia contends that the challan under Section 173 Cr.P.C. was originally

prepared by the SHO, P.S. Phase XI, Mohali, against three persons, namely, Ajay Bhardwaj, Meenakshi and Sudesh Bhardwaj. Without there being further investigation, report under Section 173 Cr.P.C., Annexure P-2, was dropped and substituted by the fresh challan dated 04.04.2012, against Ajay Bhardwaj alone and the same was presented before the Court. Learned senior counsel further contends that the name of respondents No.2 and 3, appeared in the First Information Report (FIR) and in the statement on oath of the complainant appearing as PW-1 in Court. There are specific accusations against respondents No.2 and 3 that Sudesh Bhardwaj, mother-in-law and Meenakshi, sister-in-law, of the petitioner used to suspect her without any basis and thereby used to harass her. The complainant filed an application through the public prosecutor under Section 319 Cr.P.C., which was dismissed by learned Additional Sessions Judge vide order dated 29.07.2013. However, on the same set of allegations, the charge has been altered to Section 304-B and 302 of the Indian Penal Code against accused-Ajay Bhardwaj, whereas on the similar set of allegations, respondents No.2 and 3, has been exonerated by the Investigating Agency. He further submits that prima facie a case to array the respondents No.2 and 3 as additional accused is made out in view of statement of PW-1, Sushila Sharma.

Whereas, on behalf of respondents, it is submitted that the case is at the final stage and is fixed for arguments. If at this

stage this application is allowed, it will be a de novo trial. Learned senior counsel further argued that the learned Additional Sessions Judge, has exercised its discretion judiciously.

I have heard the learned counsel for the parties and have gone through the case file carefully with their able assistance.

In this case, the final report under Section 173 Cr.P.C. was prepared on 04.04.2012, wherein no incriminating evidence was collected against Sudesh Bhardwaj and Meenakshi Grover. In pursuance of the report dated 04.04.2012, under section 173 Cr.P.C. submitted on 07.04.2012, the learned Court took the cognizance against Ajay Bhardwaj and framed charge under Section 306 of the Indian Penal Code. During the pendency of the trial, the charge was amended from 306 of Indian Penal Code to Section 302/304-B of Indian Penal Code, on the application of the prosecuting agency filed under Section 216 of the Code of Criminal Procedure. After recording the statement of the complainant in Court, another application under Section 319 of Criminal Procedure Code for summoning respondents NO.2 and 3 as additional accused was filed, which was dismissed vide impugned order dated 29.07.2013. In this case, respondents No.2 and 3, were declared innocent by a gazetted officer of the police. The learned trial Court observed that the complainant in his testimony before the Court repeated the same allegations as levelled in the police investigation and there is no other evidence

available on record. The case is at the final stage. The respondent No.2 is the mother-in-law and respondent No.3 is the sister-in-law of the petitioner. In ***Preeti Gupta Vs. State of Jharkhand, 2010(4) Recent Apex Judgment 612***, it has been observed by the Hon'ble Supreme Court that in dowry harassment cases, large number of complaints are not *bona fide*. It is a case of dowry death. When a girl dies after marriage, the tendency of the parents of the deceased is to rope all the family members of the husband because in future there would have no social relation with them. It is a well settled law that:-

- i. A perusal of the above shows that the trial Court is burdened with a heavy responsibility to ensure at the time of dealing with an application under Section 319 Cr.P.C. that the evidence which has come on record is quality evidence and not merely an allegation on the basis of which such a summoning can be made. There should be sufficient evidence to suggest involvement and the commission of offence by the persons sought to be summoned.
- ii. The Hon'ble Supreme Court in ***Rakesh and another Vs. State of Haryana, 2001(3) RCR (Criminal) 681 (SC)***, has observed that the power under Section 319 Cr.P.C. is to be used sparingly and the word 'evidence' in Section 319 (1) Cr.P.C., is to be used comprehensively in a broader sense so as to include the material collected by the investigating officer and the material or evidence which comes before the Court and from which the Court can prima facie conclude that person not arraigned before it is involved in the commission of the crime.

iii. The Court while dealing with an application under section 319 Cr.P.C, is not to be swayed by mere allegations that may come in the statements of overzealous witnesses during the course of trial. If the person named suggestively forms a part of chain of events leading to the commission of an offence, then summoning no doubt is justified but if it merely enlarges the arena of the number of accused because of the misplaced enthusiasm of a complaint to see all those related to the accused in the dock, then such a practice be discouraged and the Court does not have to unwittingly become a tool in the story of vendetta unleashed by complainant or any other witness.

As the learned Additional Sessions Judge has used his discretionary power after satisfying himself that there is no sufficient evidence against respondents No.2 and 3, the learned trial Court has rightly dismissed the application under Section 319 Cr.P.C. for arraying the respondents No.2 and 3 as additional accused to be tried with the main accused. Hence, this petition is dismissed.

(JITENDRA CHAUHAN)
JUDGE

06.01.2015.

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