

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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Crl. Revision No. 631 of 2012 (O&M)

Date of decision : February 9, 2015

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Narotam and another

.....Petitioners

Versus

State of Haryana

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Atul Lakhanpal, Senior Advocate
with Mr. Jasmeet Singh, Advocate for the petitioner.

Mr. C.S Bakshi, Addl. A.G., Haryana.

Mr. Robin Dutt, Advocate for the complainant.

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1. *Whether Reporters of Local Newspapers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the digest?*

RITU BAHRI, J

This criminal revision petition has been filed against the order dated 16.2.2012, whereby the Sessions Judge, Sirsa has allowed the application under Section 319 Cr.P.C and has summoned

the petitioners Narottam and Laxmi Devi as additional accused to face trial.

FIR No. 676 dated 30.12.2009 under Section 498-A, 406, 306/34 IPC was lodged at Police Station City Fatehabad, District Fatehabad (Annexure P-1) by the complainant, Raj Kumar, alleging that the marriage of his sister, Neetu was solemnised with accused Pankaj on 21.1.1999. They had three children out of this wedlock. The in-laws of Neetu tortured her for bringing less dowry and used to give her beatings. Pankaj husband of Neetu was habitual gambler and caused a huge loss of money and because of this reason, he used to harass Neetu for money. Neetu had informed her family members even on 28.10.2009 that she was being harassed and tortured by Pankaj, Narottam, Laxmi Devi, Neeru and Nitin for want of dowry. On 13.12.2009, complainant's younger brother Sanjiv Kumar received a telephonic call that Neetu was unwell. When the complainant along with his mother went to the house, he saw Neetu hanging in the bathroom with a saree tied around her neck which was knotted on the pipe of the shower. Her feet were touching the floor. She was dead. The complainant and Sanjeev alleged that her sister had been hanged after being killed. After registration of the FIR, necessary investigation was carried out and a challan was presented against Pankaj vide Annexure P-2. Laxmi Devi, Neeru and Nitin were found innocent. During the trial complainant, Raj Kumar appeared as PW-6 and his statement was recorded. He reiterated the allegations made in the FIR that on 28.10.2009 on the occasion

of birth of male child in their house, Neetu had visited them and had alleged that her in laws physically tortured her. He further deposed that on receiving a telephonic call that Neetu was unwell, they had gone to her house and noticed that her dead body was hanging from the shower in the bathroom. He also noticed the marks of injury near the chin, on the back and feet of the dead body. Broken glass bangles of her sister were lying scattered on the stairs which are 15-20 feet away from bathroom. After his deposition, the present application under Section 319 Cr.P.C was made, which was allowed by the Sessions Judge, Sirsa.

Counsel for the petitioner has argued that after registration of the FIR, investigation was carried out and challan was presented against Pankaj under Section 306 IPC. The offence under Section 406 and 498-A IPC were not found to have been committed. The trial Court has now proceeded to summon two accused vide the impugned order by observing that as per the deposition of the complainant, PW-6, the allegations of bringing insufficient dowry cannot be said to be false and that she was being maltreated for the said reason. The application for summoning Neeru and Nitin was declined.

Counsel for the complainant has argued that the application qua Nitin and Neeru was declined on the ground that they were not residing in the matrimonial house of Neetu and Pankaj. Therefore, the allegations against them were found to be general in nature. He has further argued that the order summoning the

petitioners should not be interfered, at this stage, as the necessary evidence can be examined by the trial Court at the final stage. Counsel for the complainant did not dispute that the present petitioners were staying at the ground floor and Neetu along with her husband and children were staying on the first floor of the house but they were having a common kitchen. Therefore the allegations of harassment and abetment could be decided at the final stage of the trial. The object and the guidelines to be followed by the Court while exercising powers under Section 319 Cr.P.C to summon an additional accused had been laid down by the Supreme Court recently in the case of **Hardeep Singh vs. State of Punjab and others, 2014(1) RCR (Criminal) 623**. Questions no. 2 & 4 have been considered and decided by the Supreme Court as under:

“Question No. II

Q.II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4)Cr.P.C. the proceeding against such person is to commence from the stage

of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. IV

Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for

*summoning the accused (original and subsequent)
has to be different.”*

The Supreme Court has held that the degree of satisfaction for summoning the accused (original and subsequent) has to be different. In the present case, a challan has been presented against the husband of the deceased under Section 306 IPC. In the investigation, offence under Section 406 and 498-A IPC were not made out. While allowing the application under Section 319, the trial Court only considered the deposition of the complainant PW-6 and came to a conclusion that the allegation that the petitioners had been harassing and maltreating Neetu for bringing insufficient dowry cannot be false. Deposition of the complainant cannot be sufficient evidence to make out a case of demand of dowry. Moreover, after presentation of challan against Pankaj way back in January 2010, if the complainant was aggrieved, he could seek reframing of charges against the main accused. Once this has not been done, on the similar set of allegations, the petitioners cannot be summoned to face trial for an offence under Section 306 IPC as additional accused. The marriage between Pankaj and Neetu was solemnised way back in the year 1999 and almost 10 years had gone by. They were staying separately on the first floor along with three children and as per the judgment of the Supreme Court in ***Hardeep Singh's case (supra)***, at the stage of summoning the petitioners on an application under Section 319, apart from the deposition of the complainant, the trial Court was required to

examine an issue whether merely on account of allegation of harassment for dowry offence under Section 306 IPC could be made against the present petitioners.

Hon'ble the Supreme Court in the case of **Ramesh Kumar vs. State of Chhattisgarh, 2001(4) RCR (Criminal) 537** was examining a case where the accused-husband had been convicted for an offence under Section 306, 498-A. The allegation was that he used to tease his wife, ill treat her for mistakes and turn her out of house. It was also alleged that on one occasion at odd hours of night he gave beatings to his wife. It was held that the allegations aforesaid would amount to cruelty within Section 498-A IPC but this would not amount to an offence under section 306 IPC. In paragraph 22, it was observed as under:

“22. Sections 498-A and 306 IPC are independent and constitute different offences. Though depending on the facts and circumstances of an individual case, subjecting a woman to cruelty may amount to an offence under Section 498-A and may also, if a course of conduct amounting to cruelty is established leaving no other option for the woman except to commit suicide, amount to abetment to commit suicide. However, merely because an accused has been held liable to be punished under Section 498-A IPC it does not follow that on the same evidence he must also and necessarily be

held guilty of having abetted the commission of suicide by the woman concerned. Evidential value of the two writings contained in diary Article A is that of dying declarations. On the principle underlying admissibility of dying declaration in evidence that truth sits on the lips of a dying person and the Court can convict an accused on the basis of such declaration where it inspires full confidence, there is no reason why the same principle should not be applied when such a dying declaration speaking of the cause of death exonerates the accused unless there is material available to form an opinion that the deceased while making such statement was trying to conceal the truth either having been persuaded to do so or because of sentiments for her husband. The writing on page 11 of diary (Article A) clearly states that the cause for committing suicide was her own feeling ashamed of her own faults. She categorically declares - none to be held responsible or harassed for her committing suicide. The writing on page 12 of diary (Article A) clearly suggests that some time earlier also she had expressed her wish to commit suicide to her husband and the husband had taken a promise from her that she would not do so. On the date of

the incident, the husband probably told the deceased that she was free to go wherever she wished and wanted to go and this revived the earlier impulse of the deceased for committing suicide. The dying declaration Exbt. P/10 corroborates the inference flowing from the two writings contained in the diary and as stated hereinabove. The conduct of the accused trying to put off the fire and taking his wife to hospital also improbabilises the theory of his having abetted suicide.”

The ratio of the aforesaid judgment is that mainly if an accused has been held liable to be punished under Section 498-A IPC, it does not follow that on the same evidence he must also and necessarily be held guilty of having abetted the commission of suicide by the woman concerned. In this case accused Ramesh Kumar was acquitted for an offence under Section 306 IPC and conviction under Section 498-A IPC was maintained.

Hon'ble the Supreme Court in **Chitresh Kumar Chopra vs. State (Govt. of Nct of Delhi), 2009(4) RCR (Criminal) 196** examined the provisions of Sections 107 and 306 IPC with regard to abetment of suicide. To constitute an offence under Section 306 Indian Penal Code, the prosecution has to establish:(i) that a person committed suicide and (ii) that such suicide was abetted by the accused. In other words an offence under Section 306 would stand

only if there is an "abetment" for the commission of the crime. The parameters of "abetment" have been stated in Section 107 of the Indian Penal Code, which defines abetment of a thing as follows:

"107. Abetment of a thing

A person abets the doing of a thing, who -

First- Instigates any person to do that thing; or

Secondly- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1- A person who by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

In paragraphs 14 & 15, it was observed as under:

*14. As per clause firstly in the said Section, a person can be said to have abetted in doing of a thing, who "instigates" any person to do that thing. The word "instigate" is not defined in the IPC. The meaning of the said word was considered by this Court in **Ramesh Kumar Vs. State of Chhattisgarh, 2001 (4) RCR (Criminal) 537: (2001) 9 SCC 618**. Speaking for the three-Judge Bench, R.C. Lahoti, J. (as His Lordship then*

was) said that instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of "instigation", though it is not necessary that actual words must be used to that effect or what constitutes "instigation" must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred. A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

15. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action: provoke to action or reaction" (See: Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts" (See: Oxford Advanced Learner's Dictionary - 7th Edition). Similarly, "urge" means to advise or try hard to persuade somebody to do

something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to "goad" or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter. As observed in Ramesh Kumar's case (supra), where the accused by his acts or by a continued course of 10 conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that: (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and (ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

In **S.S Chheena vs. Vijay Kumar Mahajan and another, 2010(4) RCR (Criminal) 66**, Hon'ble Supreme Court had acquitted an accused against whom the allegation was that he had

abetted a student to commit suicide who had stolen the mobile phone of a fellow student. The charge against him was that he caused harassment to the deceased. His conviction was set aside on the ground that there was no positive act on the part of the accused to instigate or aid in committing suicide. Reliance was also placed on the case of **Ramesh Kumar (Supra)**. In paragraph 28 it was observed as under:

“28. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 Indian Penal Code there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide.”

In the facts of the present case, the marriage of Pankaj and Neetu was solemnized on 21.1.1999. They had three children out of this wedlock. They were residing on the first floor of the house, whereas, Laxmi Devi mother-in-law and Narottam father-in-law of Neetu who have now been summoned to face a trial were

staying on the ground floor. A period of 10 years had elapsed when Neetu committed suicide on 28.10.2009. As per the general allegations in the FIR, husband and in-laws family used to harass the deceased on account of bringing less dowry. Investigation was carried out and challan was presented against Pankaj only under Section 306 IPC. In the case of **Ramesh Kumar (supra)** distinction has been drawn between the allegations under Section 498-A IPC and Section 306 IPC. Even if allegations of Section 498-A IPC were made out, on the same set of allegations, the conviction under Section 306 IPC is not sustainable. The appellant/accused was convicted under Section 498-A for extending cruelty and harassment to the deceased for the sake of dowry, who subsequently committed suicide. But his conviction under Section 306 IPC was set aside on the ground that there was no immediate abetment by the husband which led the wife to commit suicide. In the present case, the marriage of the parties was solemnised in 1999 and after wife committed suicide in 2009, during investigation offence under Section 498-A IPC was not made out. The challan was presented in the year January 2010 against the husband. On the same set of allegations of harassment for dowry and ill treatment caused to the deceased, the present petitioners have now been summoned to face a trial for an offence under Section 306 IPC. To make an offence under Section 306 IPC, the ingredients of abetment as set out in Section 107 IPC have to be made out. Moreover, as per the judgment of the Supreme Court in **Hardeep Singh's case (supra)**,

the evidence to be examined for summoning the accused under Section 319 has to be more than prima facie evidence which is required for framing of charge. In the present case, the trial Court while passing the impugned order has recorded a finding that the allegations of harassment have been reiterated by the complainant while appearing as PW-6. Once the allegations of harassment on account of bringing less dowry is not made out against the main accused Pankaj on the same set of allegations, the petitioners cannot be summoned to face a trial under Section 306 IPC. The word instigation has been considered by the Supreme Court in the case of **Chitresh Kumar Chopra (supra)** wherein it has been held that the requirement of instigation must be suggestive of the consequences that it must be capable of driving the deceased with no option except to commit suicide. As per the deposition of PW-6, complainant, Raj Kumar-brother of the deceased, husband of the deceased and his family members were idle. There was a stone crusher at Salasar which was in partnership of father of Pankaj and a partner. PW-6, complainant was doing business with Pankaj of whole sale medicines at Zirakpur. The firm was known as M/s Bio-x Pharmaceuticals, Zirakpur. The application had been made for shifting the Zirakpur business to Fatehabad and necessary papers in this regard had been submitted about one and a half month prior to the death of Neetu. Moreover the allegation was Rs.1,00,00/- had been withdrawn by Pankaj from the said firm at Zirakpur. A perusal of the deposition shows that the allegations against in-laws family

were only general in nature that they used to harass her. In the examination-in-chief, it has been stated by Raj Kumar that Pankaj was addict to gambling and satta. The allegations against the in-laws were that they used to torture her for bringing less dowry.

A perusal of the deposition of PW-6 shows that the allegations against in-laws were general allegations of causing harassment for bringing less dowry. The offence under Section 498-A IPC was not made out against Pankaj to whom challan was presented under Section 306 IPC. Hence, on the same allegations, the petitioners cannot be summoned to face trial under Section 306 IPC. The ratio of the judgment of the Supreme Court in ***Ramesh Kumar's case (Supra)*** is directly applicable to the facts of the present case coupled with the fact that as per the guidelines given by Hon'ble the Supreme Court recently in the case of ***Hardeep Singh (supra)***, there was no evidence before the trial Court to consider that the petitioners had instigated the deceased to take such a drastic step. In the absence of any evidence against the petitioners for abetment as laid down by the Supreme Court in the case of ***Chitresh Kumar Chopra's (supra)***, *the petitioners could not be summoned to face a trial in an application under Section 319 Cr.P.C.* In this view of the matter, order dated 16.2.2012 is hereby quashed.

In view of all that has been discussed above, revision petition is allowed.

February 9, 2015
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(**RITU BAHRI**)
JUDGE