

207

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

**CRR No.1187 of 2015
Date of Decision: 13.05.2015**

Bhanwar Lal

.....Petitioner

Vs

State of Punjab

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. G.P.S. Bal, Advocate
for the petitioner.

Mr. Arshdeep S. Kler, D.A.G., Punjab.

Mr. Hemant Saini, Advocate
for the complainant.

1. *Whether Reporters of local papers 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?*

RAJ MOHAN SINGH, J.

[1]. Petitioner assails order dated 19.02.2015 passed by Additional Sessions Judge, Ropar in FIR No.112 dated 11.07.2013 under Sections 498-A, 306, 304-B IPC, Police Station Chamkaur Sahib, District Ropar.

[2]. The relevant extracts of FIR is as under:-

*“12. F.I.R. Contents (attach separate sheet, if required)
: Contents of statement, “Stated that I am residing at the above noted address and is agriculturist by profession. I have got four children. My elder daughter Ratni Devi, aged*

23 years, was married about 4 years back with Madan Lal son of Bhanwar Lal, caste Jat, resident of village Lakhmani Aas, Police Station Ganga Nagar, District Bhilwara (Rajasthan), presently residing at village Mane Majra, Police Station Chamkaur Sahib, District Roop Nagar according to traditional rites and ceremonies. After about one year from the marriage, said Madan Lal started causing harassment to my daughter and demanding dowry. My daughter Ratni Devi had narrated the matter to me. When I asked said Madan Lal regarding demanding dowry by him, he told me that he needs a sum of Rs.2 lac, on which I requested him that I am a poor person. At the time of marriage, I have twice given the sum of Rs.25,000/- each to my son in law Madan Lal in the presence of my daughter Ratni Devi by going to his house. At that time, Madan Lal asked me as to when you will give me balance amount of Rs.1,50,000/- to which, I requested him that I can not give any more money. Then said Madan Lal started harassing my daughter. During the said period, my daughter Ratni Devi delivered a male child, who was named as Sarwan Kumar by his grandfather Bhanwar Lal on account of love and affection, however he was having actual name at Parveen Kumar. After a period of two months from birth of child, Madan Lal started harassing my daughter Ratni Devi and demanding the amount of Rs.1.50 lac, regarding which my daughter Ratni Devi told me. She was caused quarrel and sent to my house, who stayed with me for a period of about one year. I talked to the family members of Madan Lal a number of times, but they were adamant to their demand. On 28.04.2013, Bhanwar Lal and his wife Kanku Devi came to my house and said that in case Madan Lal further harassed your daughter on the pretext of bringing dowry, we will be liable for the same. On this, I sent my

daughter Ratni Devi with them to her in-laws house on 30.04.2013. They told me that they are directly going to Chamkaur Sahib. After about 15-20 days, I received a phone call from my daughter, from Mobile No.99147-17312, when she told me that her mother in law has went back to Rajasthan. On 9.6.2013, at late night, I received phone call from Bhanwar Lal, father in law of my daughter, who told that Ratni Devi with her son Sarwan Kamar has left the house at about 9.00 p.m. and has gone somewhere. Then on 14.6.2013, at about 6.00 p.m., I received a phone call, when he called said that he is Chittar Mal on phone and that dead body of Ratni Devi is found from canal. On this, I alongwith my relatives came to Chamkaur Sahib on 15.6.2013. The proceeeding U/s. 174 Cr.P.C. regarding my daughter Ratni Dei was conducted on 16.6.2013. My daughter Ratni Devi alongwith her son Sarwan Kumar has committed suicide by jumping in Sirhind Canal at Chamkaur Sahib on having fed up at the hands of said Madan Lal for causing harassment and demanding dowry. There is no so far any information regarding her son Sarwan Kaur. My daughter Ratni Devi with her child has committed suicide on account of demanding dowry, causing harassment and giving threats to perform second marriage by said Madan Lal. Hence legal action may be taken against said Madan Lal.”

[3]. Perusal of FIR reveals that incriminating statement of allegation in respect of present petitioner (father-in-law) is that on 28.04.2013 he along with his wife-Kanku Devi came to house of complainant and assured that they will be liable in case their son-Madan Lal harasses his wife-Ratini devi (daughter of the complainant) then in such eventuality they will be responsible.

Accordingly complainant sent his daughter Ratni Devi along with her in-laws on 30.04.2013.

[4]. On 09.06.2013 at night complainant received call from father-in-law Bhanwar Lal that Ratni Devi with her son Sarwan Kumar left the house at 9.00 p.m. and has gone somewhere.

[5]. On 14.06.2013 dead body of Ratni Devi was found from canal. During the course of investigation, petitioner was found innocent and during course of trial statement of Mohan Lal-complainant was recorded. The allegation of harassment and torture qua Madan Lal accused-husband of Ratni Devi were reiterated. The instance of 28.04.2013 so far as giving assurance by petitioner that since that day onwards Madan Lal will not harass Ratni Devi was also reiterated.

[6]. The complainant got recorded in his statement that he found legs and hands of his deceased daughter tied, her nose and neck in broken condition and apparent injuries were there on head and forehead of his deceased daughter.

[7]. In the aforesaid statement allegations were made, reiterating the version of FIR and complicity of petitioner to the extent of giving promise that from that day onwards he will be responsible in case Madan Lal (his son) harasses his wife-Ratni Devi. In the statement of Shankar Lal PW-3 it was also stated that injuries on the person of deceased i.e. on her legs and hands were tied and injury

on nose and neck were handiwork of accused Madan Lal by hatching conspiracy with his father Bhanwar Lal in order to marry with some other girl. It was also mentioned that the in-laws (Madan Lal and his parents) did not attend cremation.

[8]. In the application under Section 319 Cr.P.C., allegation of conspiracy has been made qua the petitioner and in furtherance of that conspiracy they tortured the deceased Ratni Devi.

[9]. Additional Sessions Judge, Ropar vide order dated 19.02.2015 allowed the application and ordered summoning of Shankar Lal to face trial for the offences under Section 498-A, 304-B IPC. Under Section 319 Cr.P.C., on the ground that allegation against Bhanwar Lal is that of conspiracy and in furtherance of that both Madan Lal and Shankar Lal tortured daughter of the complainant.

[10]. From the record the following factual matrix can be elucidated:-

(A). From the FIR it can be found that occurrence of 28.04.2013 has been attributed to petitioner Bhanwar Lal and his wife Kanku Devi when they visited the house of complainant and assured that in case their son Madan Lal further harasses the daughter of the complainant, then they will be liable for the same. On their assurance, complainant sent her daughter Ratni Devi to her in-laws house on 30.04.2013.

- (B). Mother-in-law is statedly gone back to Rajasthan. On 09.06.2013 petitioner informed the complainant that Ratni Devi with her son has left the house and has gone somewhere thereafter dead body of Ratni Devi was found in a canal.
- (C) As per statement of complainant Madan Lal son of Piar Chand, instance of 28.04.2013 was reiterated and information given by Bhanwar Lal on 09.06.2013 was also reiterated. The complainant found legs and hands of deceased tied, nose was broken, neck was also broken and there were injuries on the head and forehead of deceased Ratni Devi.
- (D) PW-3 Shankar Lal stated that the deceased was having injuries on her person on nose, neck, head and forehead and this has been done by Madan Lal in conspiracy with Bhanwar Lal in order to marry with some other girl and in in-laws did not attend the cremation of Ratni Devi. In the application under Section 319 Cr.P.C., moved by the complainant the allegation of conspiracy has been alleged against the petitioner in connivance with his son Madan Lal. The assurance of the petitioner given on 28.04.2013 was also claimed to be an instance in furtherance of conspiracy.

[11]. Trial Court after considering the material on record considered the material to be sufficient for summoning the petitioner with the aid of Section 319 Cr.P.C. In **Hardeep Singh v. State of Punjab and others, 2014(1) RCR (Criminal) 623**, the Apex Court

has considered the scope of Section 319 in detail. The Apex Court has formulated certain questions in order to discuss the issues in detail. The same is as under:-

1. Question

What is the stage at which power under Section 319 Cr.P.C can be exercised?

And

Whether the word “evidence” used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word “evidence” is limited to the evidence recorded during trial?

Answer

Section 319 Cr.P.C., significantly, used two expressions that have to be taken note to i.e. (1) Inquiry (2) Trial- As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry – Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the Charge-sheet.

2. Question

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?

Answer

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.

3. Question

Whether the power under Section 319 Cr.P.C. can be exercised only if the Court is satisfied that the accused summoned will in all likelihood be convicted.

Answer

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 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.

4. Question

Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged.

Answer

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 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial- However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh.”

[12]. In the aforesaid judgment the Apex Court has held in para No.98 in the following manner.

“98. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary 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.”

[13]. In para No.99, the Court has further gone to hold that only a prima facie case is to be established from the evidence led before the Court which is not necessary to be tested by way of cross-examination. At this stage, it requires much stronger evidence than mere probability of his complicity. The test is that the evidence should be more than the prima facie case i.e. evidence required at

the time of framing of charge but short of satisfaction for ultimate conviction if the evidence goes unrebutted. The para No.99 is reproduced hereasunder:-

“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 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 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.

Q.(v) In what situations can the power under this section be exercised: Not named in FIR; Named in the FIR but not chargesheeted or has been discharged?”

[14]. The conclusion as culled out from aforesaid dictum is that the evidence must be more than prima facie i.e. the evidence must be more than the requirement for framing of charge and it should be just short of sufficiency for ultimate conviction. It is a settled principle of law that a charge can be framed even on strong suspicion. The complicity of the petitioner in terms of FIR i.e. assurance given by him for the well being of deceased and thereafter disappearance of the deceased from the house along with her minor child and recovery of dead body from a canal having injuries on person proves the ingredients. Moreover the injuries on hand, leg, nose etc. further goes to strengthen the requirement of law at this stage. According to one of the prosecution witness the in-laws did not attend the cremation of the deceased. All these factors go in a way to project prima facie material for hatching conspiracy by the petitioner which is sufficient to frame charge and this strong suspicion was not only sufficient for framing charge but it should have been more than sufficient for framing of charge and can be treated to be just short of ultimate conviction.

[15]. While answering question No.4 the Apex Court has ultimately answered the question in the following manner:-

The conclusion drawn by the Apex Court is that even if a person is not named in the FIR or a person named in the FIR but has not been chargesheeted and a person who has been discharged can be summoned under Section 319 Cr.P.C.

[16]. Looking to the allegations in the FIR and in the statement as well as in the statement of Shankar Lal, the allegation made in the application under Section 319 has necessary nexus with the prima facie allegation in the FIR and statement and if the material is tested on the touchstone of the observation made by the Apex Court in **Hardeep Singh's** case (supra) that would lead to conclusion that at this stage prosecution has sufficiently led evidence to proceed against petitioner in terms of Section 319 Cr.P.C., and the petitioner has been rightly summoned to face trial.

[17]. Looking to the facts and circumstances of the case, this Court is of the view that no interference is called for in the impugned order, hence present revision petition is dismissed being totally bereft of merits.

May 13, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE