

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

Crl. Revision No. 1265 of 2014(O&M)

Date of Decision: 11.05.2015

Surinderpal Singh & Anr.

.. Petitioners

Vs.

State of Punjab

.. Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. K.S. Chahal, Advocate
for the petitioners.**

Mr. Deep Singh, AAG Punjab.

**Mr. H.S. Batth, Advocate
for the complainant.**

ANITA CHAUDHRY, J.

The petitioners are aggrieved of order dated 22.03.2014 passed by the Additional Sessions Judge, Ludhiana vide which both of them have been summoned to face trial as additional accused in FIR No. 29 dated 05.03.2013, registered under Sections 306 read with Section 34 IPC at Police Station Sadar, Ludhiana.

The facts of the case are being noticed first. Surinder Kaur, mother of Pooja (deceased) got a case registered against Maninder Singh(husband), sister-in-law Sukhwinder Kaur and the present petitioners, who are Jeth and Jethani of Pooja. Pooja was married to Maninder Singh

five months prior to the incident. Sukhwinder Kaur, sister of Maninder Singh was a divorcee and used to reside in the same house. As per allegations, despite giving sufficient dowry, Sukhwinder Kaur used to harass Pooja and demanded more dowry. On 02.03.2013 complainant brought a golden bracelet (Karra) for Maninder Singh and golden chain for Sukhwinder Kaur. Pooja was still harassed and maltreated. It was further alleged that on 05.03.2013 the complainant received a telephonic call from Pooja who told her mother that she was going to die due to harassment being meted out to her by her in-laws, namely, husband, jeth, jethani, sister-in-law, who had compelled her to die. Pooja further told Surinder Kaur that she had left a suicide note in the almirah and disconnected the call. The complainant rushed to Ludhiana, where she found her daughter dead.

On these broad allegations, the case was registered and investigated. The suicide note was recovered from the almirah. After the enquiry, the police filed challan against husband Maninder Singh and sister-in-law Sukhwinder Kaur. The present petitioners Surinderpal Singh and Anju were not found involved.

Charge under Section 306 read with Section 34 IPC was framed against the accused.

Complainant Surinder Kaur appeared as PW1 and her examination-in-chief was recorded, wherein she named the present petitioners being instrumental in commission of the offence.

The prosecution then filed an application under Section 319 Cr.P.C. seeking summoning of the present petitioners as additional accused.

As noticed above, vide order dated 22.03.2014 the application was allowed and the present petitioners have been summoned to stand trial.

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

It has been argued by learned counsel for the petitioners that the petitioners had been married much prior to the marriage of Pooja and had been residing separately at Amritsar and both are practising Doctors there and they had no concern with the married life of the couple. It has further been contended that no specific role has been attributed to the present petitioners in the FIR and their names were not mentioned by the deceased in the suicide note. It was urged that it was for this reason that the police did not file challan against both of them. It has been contended that provisions under Section 319 Cr.P.C. have wrongly been invoked.

Reliance has been placed on **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.

On the other hand, learned State counsel does not dispute that the petitioners were found innocent during investigation.

Learned counsel for the complainant has supported the impugned order. It has been urged that the complainant has deposed specifically about their involvement and were rightly summoned to face trial.

In **Hardeep Singh Vs. State of Punjab & Ors. 2014(3) SCC 92**, Hon'ble Apex Court deliberated the issue of exercise of powers under Section 319 Cr.P.C. While dealing with the question as to the degree of satisfaction required for invoking the power under Section 319 Cr.P.C., plethora of judgments were taken into account and observed as under:-

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 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."

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, Suman Ashok Kumar, Dalpreet Singh and Sukkhu Raidas (supra).

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

A perusal of the allegations in the FIR itself shows that there is nothing specific regarding demand of dowry or harassment in relation thereto by the present petitioners. There are general allegations in the FIR that Pooja committed suicide due to harassment meted out on her by the present petitioners. But there is no specific instance regarding harassment given by the present petitioners. It is not disputed that the present petitioners are residing separately at Amritsar and were married much earlier to Pooja. In the application filed under Section 319 Cr.P.C. their address of Amritsar is referred and has not been disputed before me. The names of the petitioners are conspicuously missing in the suicide note left by the

deceased. Pooja had written about the harassment and demand at the instance of Sukhwinder Kaur. From the contents thereof, it is apparent that the petitioners were not named by the deceased. The complainant has made improvement by naming them in the FIR as well as in the statement before the Court. It is a well 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 Courts are required to apply the stringent tests one of the tests is that the Court should come to the reasonable conclusion on the basis of evidence before it that the same is likely to lead to conviction. No finding in this regard has been returned by the trial Court while summoning the petitioners. Even 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 other than the accused.

In view of the above, present revision petition is allowed and impugned order dated 22.03.2014 passed by

learned Addl. Sessions Judge, Ludhiana, summoning the petitioners as additional accused is set aside.

May 11, 2015
Jiten

(ANITA CHAUDHRY)
JUDGE