

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

CRR No.1659 of 2014

DATE OF DECISION: March 10, 2015.

Jai Bhagwan Dhanak

....Appellant.

VERSUS

State of Haryana and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

Present: Mr. Shilak Ram Hooda, Advocate for the petitioner.

SNEH PRASHAR, J.

Aggrieved by the order dated 29.04.2014, vide which an application filed by the prosecution/complainant under Section 319 of the Code of Criminal Procedure (in short, "Cr.P.C.") for summoning Omi @ Om Pati wife of Suraj Bhan (mother-in-law), Pawan son of Suraj Bhan (brother-in-law), Suraj Bhan son of Prahlad Singh (father-in-law) and Sandeep (a cousin of husband) of deceased Sushma as additional accused in First Information Report No.296 dated 04.11.2013 registered at Police Station Barauda, District Sonapat under Section 304-B of the Indian Penal Code (for short, "I.P.C."), was dismissed, the petitioner-complainant Jai Bhagwan filed the instant criminal revision.

2. Precisely, the facts relevant for disposal of the instant petition

are that on 04.11.2013 an information was received by the police regarding death of one Sushma wife of Kuldeep son of Suraj Bhan due to hanging. Jai Bhagwan, father of deceased Sushma gave a written complaint to Sub Inspector Sishan Kumar, alleging that his daughter, who was married on 28.06.2012 with Kuldeep, had been killed by her in-laws on account of non-fulfillment of demand of dowry. He added that marks of strangulation were seen on the neck of the deceased and that at the time of death she was 6/7 months pregnant. The said allegations were levelled against Kuldeep, his father Suraj Bhan, mother Omi @ Om Pati and brother Pawan.

A case under Section 304-B read with Section 34 of I.P.C. was registered on the basis of the complaint and investigation commenced. During investigation, Kuldeep and his father Suraj Bhan were arrested and the remaining persons named in the First Information Report were found to be innocent. Accordingly, a charge-sheet was filed against the accused who were arrested.

3. Kuldeep and Suraj Bhan were charge-sheeted for commission of offence under Section 304-B read with Section 34 of I.P.C. As they pleaded not guilty, prosecution was called upon to lead evidence. Jai Bhagwan, father of the deceased was examined and thereafter an application under Section 319 of Cr.P.C. was filed for summoning the persons named above as additional accused.

Apprised of the arguments put forth on behalf of the parties and the material available on the file, learned Additional Sessions Judge, Sonapat, dismissed the application vide order dated 29.04.2014 which was

then assailed by the complainant by way of instant petition.

4. The submissions made by Mr. Shilak Ram Hooda, learned counsel representing the petitioner have been considered.

5. At the very outset, learned counsel for the petitioner submitted that respondent no.2 Suraj Bhan, father of Kuldeep-husband of deceased Sushma, was arrested and challaned by the police and it was inadvertently that his name was mentioned in the application under Section 319 Cr.P.C. filed by the complainant-prosecution and he was also impleaded as respondent no.2 in the present revision petition. Coming to the merits of the petition and as regards the other respondents no.3 to 5, learned counsel contended that deceased Sushma was married to Kuldeep on 28.06.2012 and she died on 04.11.2013 because of strangulation. Since the death had taken place within seven years of marriage at the matrimonial home, the presumption under Section 113-B of the Indian Evidence Act, 1872 (for short, "the Act of 1872") is attracted and as per mandatory provisions of the same, the Court has to presume, against whom is the allegation of demand of dowry, that they had caused the dowry death. To support his arguments, learned counsel relied upon **Sultan Singh vs. State of Haryana, 2014(4) R.C.R. (Criminal) 757.**

Learned counsel further contended that Omi, mother-in-law and Pawan, brother-in-law were named as accused by the complainant in the First Information Report itself. He had also specifically stated that his daughter had been killed by her in-laws on account of non-fulfillment of demand of dowry. The said allegations were reiterated on oath by

petitioner-complainant Jai Bhagwan when he stepped into the witness box during the trial. Relying upon **Hardeep Singh vs. State of Punjab and others, 2014(1) R.C.R. (Criminal) 623**, learned counsel asserted that there was sufficient evidence in the shape of deposition of the complainant-petitioner against the persons sought to be summoned. Respondents no.3 to 5, being close relations of the two accused namely, Kuldeep and Suraj Bhan, who are already facing trial, were living with the deceased at the time of occurrence. The allegation of demand of dowry was against all of them and therefore they ought to have been summoned to face trial by the learned trial Court.

6. The arguments of learned counsel for the petitioner do not appear to be convincing and meritorious. Indeed, in the First Information Report, Kuldeep-husband, Suraj Bhan-father-in-law, Omi @ Om Pati-mother-in-law and Pawan-brother-in-law of the deceased were named as accused and the allegation was also that the deceased had been killed by her in-laws on account of non-fulfillment of demand of dowry, but no specific incident of demand of dowry was mentioned naming all members of the in-laws family of the deceased. Section 113-B of the Act of 1872 lays down that when the question is whether a person had committed dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment in connection with demand of dowry, the Court shall presume that such person has caused the dowry death. As already observed above, nothing was stated in the First Information Report against any of the persons who are sought to be

summoned as additional accused, to say that soon before her death the deceased had been subjected to cruelty or harassment by them on account of their demand for dowry.

Certified copy of the statement of complainant-petitioner Jai Bhagwan was filed alongwith the present petition and a perusal of the same shows that in the said statement also the complainant did not mention anything specific to state that Omi @ Om Pati-mother-in-law, Pawan-brother-in-law and cousin brother-in-law Sandeep had been harassing the deceased for bringing insufficient dowry. No specific overt act was attributed to either of them.

7. Indeed, it is a settled proposition of law that invoking the provisions of Section 319 Cr.P.C., the Court either suo-moto or on an application filed before it, has the power to summon a person named or not named in the First Information Report but not charge-sheeted or a person, who had been discharged, but at the same time, it is also important that the power to summon an additional accused is an extraordinary power and should be used sparingly only if compelling reasons exist for taking cognizance against the person sought to be summoned. In **Sarabjit Singh & Anr. vs. State of Punjab, 2009(34) R.C.R. (Criminal), 388 (SC)**, it was held by the Apex Court that a person should be summoned under Section 319 of Cr.P.C. as additional accused only when the Court finds that evidence on record is such which would reasonably lead to conviction of the person sought to be summoned and such power can be exercised only on the basis of some fresh evidence brought before it and not on the basis of

materials which have been collected during investigation.

8. Indeed, for exercising the power conferred under Section 319 of Cr.P.C., the Court has to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if goes unrebutted, would lead to conviction of the persons sought to be added as accused in the case. As already observed above, the petitioner-complainant did not narrate any specific incident or refer to any particular act/conduct either while lodging the First Information Report or during his deposition in the Court against the persons, sought to be summoned as additional accused, for making out a case against them for commission of offence. Nothing was stated to indicate their involvement or the role attributed to them in the allegation of harassment on account of demand of dowry or during the occurrence. It is a known fact that in such cases the tendency is to implicate maximum members of the family of husband of the deceased therefore the court has to be cautious and judicious while considering the matter regarding summoning of additional accused in such cases. Husband and father-in-law, against whom there can be a presumption, if at all under Section 113-B of the Act of 1872, are already facing trial.

Thus, there being no prima-facie evidence against the persons whom the complainant sought to summon as additional accused and there being no ground warranting intervention in the impugned order passed by learned trial court, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

March 10, 2015
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