

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

Crl. Revision No. 1663 of 2015(O&M)

Date of Decision: 11.08.2015

Meenu @ Meenu Kumari & Anr.

.. Petitioners

Vs.

State of Haryana

.. Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. Ashit Malik, Advocate
for the petitioners.**

Mr. G.S. Salwara, DAG Haryana.

**Mr. Navin Daryal, Advocate
for the complainant.**

ANITA CHAUDHRY, J.

The petitioners are aggrieved of order dated 17.04.2015 passed by the Additional Sessions Judge, Sonapat, vide which they have been summoned to face trial as additional accused in FIR No. 361 dated 10.11.2014, under Sections 323, 328, 498-A, 506 IPC read with Section 34 IPC, registered at Police Station Sadar Gohana, District Sonapat.

The facts leading to the institution of present criminal revision petition are being noticed first.

Complainant Nisha was married to Ajay on 28.01.2013. Ajay has two sisters Meenu @ Meenu Kumari,

petitioner No.1 and Renu. Petitioner No.2 is the husband of Renu.

Nisha was admitted in Ravindra Hospital with history of poison. On 10.11.2014 an application was moved by the police requesting the Magistrate to record her statement under Section 164 Cr.P.C. The Magistrate went to the hospital and recorded her statement. She had stated that soon after her marriage, her mother-in-law Sushila, father-in-law Chander Singh, husband Ajay, sister-in-law Meenu and husband of sister-in-law Narender were harassing her for dowry. A sum of Rs. 1 lac was given in cash and Rs.3 lacs by way of cheque for purchase of car. She returned to her in-laws house on 24.01.2014 on the assurance of the accused to treat her well. But was given beatings. On 13.08.2014 a complaint was given in the Women Cell and the matter was reconciled. She further stated that Narender had an evil eye on her. On 08.11.2014 an altercation took place between her and parents-in-law and she was given beatings. Her husband abused her on phone. In the evening at about 5/5:30 p.m. her husband, parents-in-law, sister-in-law and husband of sister-in-law forcibly made her to consume poison and she lost consciousness.

On this statement, FIR was registered.

Investigations were commenced. Challan was filed against Ajay and his parents. The petitioners were found innocent. Their names were kept in column No.2 of the challan.

After charge, statement of the complainant was recorded. Thereafter an application under Section 319 Cr.P.C. was moved and the prosecution wanted the summoning of the petitioners. The application was allowed vide impugned order dated 17.04.2015.

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

It has been urged by learned counsel for the petitioners that the petitioners have wrongly been summoned as no specific role had been attributed to the petitioners in the FIR. It was urged that it was for this reason that the police did not file challan against both of them and the complainant has made improvements during trial only to widen the net. It has been contended that provisions under Section 319 Cr.P.C. could not have been invoked.

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 on the issue regarding the powers under Section 319 Cr.P.C. Dealing with the question regarding degree of satisfaction required for invoking the power under Section 319 Cr.P.C., numerous judgments were taken into account and it was observed:-

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 un rebutted, 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 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.**

It is apparent that for the purpose of forming an

opinion to summon an additional accused, the Court must be satisfied that there exists an extra ordinary case for 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 the complainant was harassed by the accused. The petitioners were admittedly married much prior to the marriage of the complainant and are residing separately at village Barota. Petitioner No.2 is doing transport business. The petitioners cannot be said to be a beneficiary from the alleged payment of Rs.4 lacs for the car. They are residing separately and at a distant place. While entering into the witness-box complainant has made number of improvements, including demand of Rs.2,51,000/- by the accused and of gold ear rings and ring for the petitioners, which was allegedly fulfilled. Coming to the participation of the petitioners in the alleged forcible administration of poison, the presence of both the petitioners at the time of occurrence was doubted by the investigating agency at the time of alleged occurrence and for this reason, they were not challaned by the police. As said above, both of them were resident of

village Barota. It has been shown that the complainant was got admitted by her father-in-law in Civil Hospital, Khanpur Kalan with alleged history of ingestion of some unknown poisonous substance. No new fact, apart from improvements in the statement of complainant, was there to prima facie satisfy the sine qua non for summoning the petitioners as an additional accused. It appears that the complainant had levelled allegations against the present petitioners just to widen the net. 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. Though the Court in the impugned order mentioned this fact, but 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 17.04.2015 passed by learned Addl. Sessions Judge, Sonapat, summoning the petitioners as additional accused is set aside.

However, it is made clear that this Court has analyzed the material and evidence on record only in relation to the petitioners. The observations made are without prejudice to the case on merits qua the other accused.

August 11, 2015
Jiten

(ANITA CHAUDHRY)
JUDGE