

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

CRR No.1708 of 2015

Date of decision: 11th May, 2015

Deepika

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

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

Present: Mr. Vivek Khatri, Advocate
for the petitioner.

FATEH DEEP SINGH, J.

Complainant Deepika the present revisionist through the instant revision petition has challenged an order dated 20.04.2015 passed by the learned Additional Sessions Judge-cum-Special Court for Heinous Crime against Women, Hisar whereby application of the complainant for summoning of Shakuntla, Indrawati, Mandroop and Nihal Singh as additional accused by the exercise of powers under Section 319 Cr.P.C. was declined.

Before venturing into the finer aspects of this assailment, a sketch of the entire dispute between the parties needs to be recapitulated.

Marriage of the complainant/revisionist Deepika was solemnized with Rakesh son of Sohan Lal in the month of February, 2006. The parties thereafter entered into a matrimonial duel and there arose allegations and counter-allegations against each other as well as the family members and the allegations of the wife are that her husband and in-laws were instrumental in raising demand of dowry, physically and mentally torturing her. In her complaint to the police (Annexure P4), the wife had given instances of physical assault, demand of money, so on and so forth leading to the registration of FIR bearing No.152 dated 06.03.2014 at Police Station Civil Lines, Hisar under Sections 498A, 406, 506, 120B, 376 and 511 IPC.

It is during the course of trial after examination of the complainant PW1, the application in question was moved to summon Shakuntla, Indrawati, Mandroop and Nihal Singh as additional accused which was declined. It is admitted stance of the two sides as has been argued on behalf of the revisionist as well as respondents that these persons were found innocent during investigation and that is how the occasion has arisen to summon them as additional accused. It is admitted stand of the revisionist side that Shakuntla, who is sister of the husband of the complainant, is married to Mandroop in the year 1979 whereas another sister of the husband of complainant namely Indrawati was married prior to the marriage between the complainant and Rakesh. No doubt, the powers under Section 319 Cr.P.C. are of extraordinary nature and the Court, during the course of any enquiry or trial of an offence, if is satisfied from the

evidence that any person not being an accused has committed any offence in which such a person could be tried along with accused who are already being proceeded against, the Court can order/direct such person to appear before it to face the trial. Thus, the simple reading of these provisions shows that the case against such person can only proceed if evidence collected or produced before the Court during these proceedings of enquiry, trial etc. is of such a cogent nature that the Court is prima facie satisfied that a process needs to be issued against such persons.

The learned trial Court has shown its satisfaction supported by judicial reasonings that since Shakuntla and Indrawati who were married to Mandroor and Nihal Singh, who are sought to be summoned as additional accused were married much prior to the marriage of the complainant with Rakesh and were also found innocent during the investigations and it does not instill confidence in the story that these persons who are living separately at a far-off place having their own families would derive any benefit out of the demand of dowry, money or such like acquisitions from the complainant. Even a close look at the First Information Report though as has been held by the learned trial Court, names of these persons were found therein but certainly in the light of contentions made before this Court are only general accusations. Neither there is any specific demand of a particular article attributed to them nor particulars of any incident of cruelty with finer details are forthcoming from the complainant. Since the Courts in exercise of powers under Section 319 Cr.P.C. were to

use such extraordinary discretionary powers but to ensure that there exists a possibility that there were reasonable prima facie allegations supported by the cogent and reliable evidence to show their culpability. Since these allegations cannot be reasonably termed to be of such a nature which could instill confidence in the Court that the same were worth credence and would lead to conviction of these persons, the Court cannot exercise its powers in favour of the complainant. As has been argued the investigation has exonerated these persons and it is a matter of common knowledge that in cases of such matrimonial disputes with anguish and revenge at large there is every effort to ensure that the entire family is roped in. It has become a tendency now-a-days to ensure prosecution of the sisters, their husbands and other close relatives with an ulterior motive to teach the family a lesson. A close look at the testimony of the prosecutrix shows that there is material improvement in the subsequent version before the Court as earlier in the complaint to the police (Annexure P3) names of Rakesh, Sohan Lal, Shakuntla Devi and Indrawati have been given only in the head-note and the names of Mandroor and Nihal Singh were subsequently added without assigning any specific role in crime, is in itself testimony how this element of revenge is spreading its tentacles.

The provisions of Section 401 Cr.P.C. though can be exercised sparingly at the behest of a private complainant but it has been laid down by the Hon'ble Supreme Court in '**Sheetala Prasad v. Sri Kant**' reported in **AIR 2010 SC 1140** holding that only in the

eventualities where the trial Court has wrongly shut off evidence which the prosecution wished to produce, where the admissible evidence is wrongly brushed aside as inadmissible, where the trial Court has no jurisdiction to try the case and has still acquitted the accused, where the material evidence has been overlooked either by the trial Court or the appellate Court or the order is passed by considering irrelevant evidence, and where the acquittal is based on the compounding of the offence which is invalid under the law; only in those eventualities powers can be exercised in Revision. In view of the ratio laid down in **‘Kaptan Singh v. State of Madhya Pradesh’ 1997(4) SCC 211**, the same can be used only in rarest of rare cases where there is manifest illegality or for preventing gross miscarriage of justice.

In the instant case, the total necessary ingredients are very much missing and therefore, nothing can be found fault with the impugned order which is correct exercise of the powers by the learned lower Court and no benefit can be derived out of cited ratio **‘Hardeep Singh v. State of Punjab’ 2014(3) SCC 92** in view of the factual disparity.

In the light of discussions made above, the instant revision petition being devoid of any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

May 11, 2015
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