

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

Crl. Revision No.2884 of 2014

Date of decision: March 2 , 2015

Bakshish Singh

...Petitioner

Versus

Bhajan Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr. P.S. Jammu, Advocate
for the petitioner.

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest?

Amol Rattan Singh, J.

1. This revision petition has been filed by the complainant of FIR No.242 dated 05.09.2013, against the order of the learned Addl. Sessions Judge, Sirsa, dated 20.08.2014, dismissing the application of the prosecution, moved under Section 319 of the Cr.P.C., for summoning Bhajan Singh, Joginder Singh and Gurpreet Kaur (respondents no. 1 to 3 herein) as accused, to face trial in the aforesaid FIR which was registered in respect of the commission of offences punishable under Sections 498-A, 304-B, 120-B read with Section 34 of the IPC.

2. As per the application, the aforesaid three persons had been named as accused in the FIR registered at the instance of the present petitioner (complainant), naming therein Pargat Singh (husband of the complainants' deceased daughter), Harpal Singh son of Bhajan Singh (father-in-law of the complainants' deceased daughter), Chhinder

Kaur/Shinder Kaur (mother-in-law of the complainants' deceased daughter), as also the afore named three persons.

Whereas the report under Section 173 of the Cr.P.C., implicated Pargat Singh, Harpal Singh and Chhinder Kaur, the other three named above were not implicated by the police. Though Joginder Singh is stated to have remained in judicial custody for three months during investigation, he was still not implicated in the report filed by the investigating agency.

3. It is necessary to note that Bhajan Singh, in the FIR, is shown to be father of Harpal Singh and thus grand-father-in-law of deceased Daljinder Kaur and has been referred to as such in the FIR, by the petitioner-complainant. However, in the application filed under Section 319 of the Cr.P.C., a copy of which has been annexed as Annexure P-2 with the present petition, Harpal Singh, i.e. father-in-law of the deceased girl, is shown to be the son of Harbhajan Singh and not son of Bhajan Singh in the memo of parties, though in the main body of the application, he is stated to be grand-father-in-law/'Dada Basur Mamsara' of deceased Daljinder Kaur and Harpal Singh again is shown as the son of Bhajan Singh.

In his testimony as PW-1, the petitioner again referred to Bhajan Singh as the grand-father-in-law of his daughter but in cross-examination, he stated him to be the maternal uncle of Pargat Singh.

Obviously, there is a discrepancy in the reproduction of his cross-examination, because the maternal uncle ('Mama') of Pargat Singh cannot be his grand father ('Dada'). Hence, the correct relationship seems to be given in the application filed under Section 319 of the Cr.P.C.,

wherein, in the initial body of the application, Bhajan Singh is shown as the son of Jeet Singh, grand-father-in-law/'Dada Mamsara' of the deceased Daljinder Kaur, thereby either meaning that Harpal Singh and his wife Chhinder Kaur were cousins but married to each other, or that, being a maternal uncle of Chhinder Kaur, Bhajan Singh was living with her family and was treated as the patriarch.

The necessity of determining the relationship of Bhajan Singh to the rest of his family, including deceased Daljinder Kaur, was important in order to determine, firstly, whether he was a resident of the same house as that of the deceased girl, along with her husband, father-in-law and mother-in-law, or was residing at a separate place being the brother of the mother-in-law of the deceased girl.

It is also, therefore, necessary to notice that whether this person, (respondent No.1), is shown as Bhajan Singh or Harbhajan Singh before this Court or the trial court, or even in the statement which led to the registration of the FIR, he is consistently shown as the son of Jeet Singh, resident of Village Rampur Theri, i.e. the village where respondents No.4 to 6, i.e. husband and parents-in-law of the deceased girl, are shown to be residents of.

4. Gurpreet Kaur is stated to be the sister of Pargat Singh, i.e. sister-in-law of the deceased lady (Daljinder Kaur) and Joginder Singh is stated to be the maternal uncle of Chhinder Kaur who is the mother-in-law of the deceased.

All the persons named in the FIR, including, of course, the three persons sought to be arraigned as accused, have been impleaded as

respondents in the present petition, with Pargat Singh being respondent No.4, Harpal Singh being respondent No.5 and Chhinder Kaur/Shinder Kaur being respondent No.6.

5. As submitted by Mr. Jammu, learned counsel appearing for the petitioner, and as stated in the FIR, the petitioners' daughter, Daljinder Kaur was married to Pargat Singh on 18.01.2011 and dowry was given to the in-laws of deceased Daljinder Kaur as per capacity of the petitioner, but even on the day after the marriage, her in-laws started taunting her for having brought less dowry and thereafter she is stated to have been turned out of the house.

A 'panchayat' is stated to have been convened after which Daljinder Kaur was sent back to her matrimonial home, also sending Rs.1.5 lacs and an LCD (TV) with her. Thereafter, the behaviour of the respondents towards the petitioners' daughter is stated to have been good for some time, but after she gave birth to a daughter on 23.10.2011, she was again stated to have been subjected to harassment, on the 'ground' that she had created a liability for them, after which she is stated to have been again left at her parental home at Rania.

A 'panchayat' is again stated to have been convened, after which the girl was sent back to her matrimonial home, along with one fridge, upon which she was treated well for some time but thereafter yet against left at her parental home.

6. On 31.08.2013, another 'panchayat' was convened and, as stated in the FIR, it was decided/resolved that the husband and parents of the deceased girl would not demand any dowry in future and, on the other

hand, the brother and first cousin of the deceased girl, i.e. the son of the petitioner and his nephew, would also not enter the village where she was married, i.e. Village Rampura Theri.

Allegedly, at the said 'panchayat', Joginder Singh (respondent No.2), who is also sought to be arraigned as an accused, stated in a loud voice that the brother and cousin of Daljinder Kaur would not enter Village Rampura Theri to enquire about her welfare, even if she was murdered by Pargat Singh and his family.

As per counsel for the petitioner and as stated in the application moved under Section 319 of the Cr.P.C. before the trial Court, all persons sought to be arraigned as accused, as also Pargat Singh, Harpal Singh and Shinder Kaur, had stayed at the house of the petitioner on 31.08.2013 and on 01.09.2013 took Daljinder Kaur and her daughter (Seerat) back to Village Rampura Theri.

7. Mr. Jammu further submitted that on 02.09.2013, Pargat Singh, Daljinder Kaur and Seerat went for an 'outing' to Uttar Pradesh, where the brother of Harpal Singh (father-in-law of the deceased), is stated to have agricultural land and before going there, the daughter of the petitioner spoke to him in the morning and she appeared to be absolutely all right.

On 03.09.2013, the petitioner is stated to have received a phone call at 8.00 p.m. from his son-in-law (Pargat Singh), that they had reached Uttar Pradesh safe and sound.

However, on 04.09.2013 at 6.30 a.m., he again received a phone call from Pargat Singh and was told to talk to his grand-daughter (Seerat), who told him that her mother (deceased Daljinder Kaur) was not

talking to her.

Thereafter, Pargat Singh again called the petitioner, as stated in the FIR, and informed him that his daughter had died and that he should come and take her body from Uttar Pradesh.

However, thereafter the body is stated to have been brought by Pargat Singh himself to the petitioners' home in Village Rania. In the meantime, a complaint is stated to have been made to the police but was registered as an FIR only after the body of the deceased reached the house of the petitioner.

8. Mr. Jammu further submitted that the petitioner had also already testified as a prosecution witness before the trial Court and as can be seen from a perusal of his testimony (Annexure P-3 with the petition), there is no discrepancy in what he stated in his complaint and what he has reiterated before the trial Court on oath.

In the above circumstances, Mr. Jammu, submitted that since respondents No.1, 2 and 3, Bhajan Singh, Joginder Singh and Gurpreet Kaur, were all present at each 'panchayat' convened and especially were also present on 31.08.2013 and in fact stayed at night at the house of the petitioner and immediately thereafter, i.e. on 02.09.2013, the petitioners' daughter and her husband (respondent No.4) and their daughter left for Uttar Pradesh, where she died on the night of 03/04.09.2013, and further, because allegations of demand for dowry have been made by the petitioner and his family against these three persons also, who were not only named in the FIR but Joginder Singh was in fact kept in judicial custody for as long as three

months, on account of his implication, the impugned order of the learned Addl. Sessions Judge, dismissing the application under Section 319 of the Cr.P.C., is wholly erroneous.

8. A perusal of the said order, shows that the trial Court has dismissed the application on account of the following reasons:-

i) That despite the allegations made against respondents No.1 to 3, even in the statement of witnesses recorded under Section 161 of the Cr.P.C., the matter having been investigated by more than one police officials, including a Deputy Superintendent of Police, only respondents No.4 to 6 were implicated by the investigating agency despite the fact that respondent No.2, Joginder Singh, remained in custody for three months. As such, nothing incriminating with regard to the demand for dowry was found against the first three respondents, by the police.

ii) The petitioner (complainant) in his testimony as PW-1, did not level any allegation of dowry against Joginder Singh (respondent No.2), who is the maternal uncle of respondent No.6 (i.e. maternal uncle of the mother-in-law of the deceased), even though the allegation in his complaint was that Joginder Singh, in the 'panchayat', had declared that the brothers of the deceased girl would not go to her village.

iii) In his cross-examination, the petitioner admitted that Gurpreet Kaur (respondent No.3), was married 4-5 years prior to the marriage of the deceased and had two children and was living in her matrimonial home at a distance of 20/25 kilometers away from the village of her parents, i.e. from the matrimonial home of the deceased daughter of the petitioner.

(iv) Further, no specific allegation of demand of dowry had been made against Gurpreet Kaur, or even against Bhajan Singh (respondent No.1), paternal grand-father of Pargat Singh/ his mothers' maternal uncle.

9. After noticing the above, the learned trial Court relied upon various judgments of the Hon'ble Supreme Court in **Lal Suraj alias Suraj Singh and another Vs. State of Jharkhand**, 2009 (1) RCR (Crl.) 504, **Dayanand Singh Vs. State of Haryana and another**, 2012 (3) RCR (Crl.) 105 and **Sarabjit Singh and another Vs. State of Punjab and another**, 2009 (3) RCR (Crl.) 389, to hold that a person should be summoned under Section 319 of the Cr.P.C. only if there is a possibility of recording a judgment of conviction against him and that a small suspicion or doubt would not suffice to summon a person as an additional accused.

Further referring to **Sarabjit Singhs'** case (supra), the trial Court held that the power to summon a person can only be exercised on the basis of fresh evidence brought before it and not on the basis of the material collected during investigation.

The trial Court also referred to a judgment of this Court in **Hardev Singh and another Vs. Satnam Kaur**, 2007 (2) RCR (Crl.) 692, to state that the tendency to rope in a large number of family members of the prime accused, is a common tendency and as such a Court should proceed with caution while dealing with such conviction.

10. Having having considered the submissions of the learned counsel for the petitioner and having going through the contents of the documents before this Court, as also the impugned order of the trial Court, it is seen that the opinion formed by the learned trial Court and conclusion

drawn by it, with regard to a tendency to rope in relatives of the prime accused is not incorrect. However, while dismissing the application of the petitioner, the conclusion drawn seems to be only related to the allegations with regard to the commission of an offence punishable under Section 304-B of the IPC and not with regard to an offence punishable under Section 498-A, whereas a perusal of the contents of the FIR, as also the testimony of the petitioner before the trial Court, would also indicate harassment (as alleged by the petitioner) at the hands of those named by him, including respondents no. 1 to 3. This is especially in relation to the allegation that the petitioners late daughter was allegedly taunted for having given birth to a girl etc. Whether or not such allegations are substantiated by any material before the learned trial Court, so as to warrant summoning of respondents No. 1 to 3, is something which the trial Court would be required to apply its mind to and thereafter come to a conclusion with regard to the same, keeping, of course, in mind what that Court rightly observed, with regard to the possibility of persons being falsely roped in.

Further, it is seen that the trial Court has referred to respondent No. 1 as the paternal uncle of the husband (Pargat Singh), of the deceased daughter of the petitioner, whereas, as already discussed in detail earlier, he is at places referred to as the uncle of respondent No. 6 (Chhinder Kaur) and some times as the grand-father-in-law of the deceased girl. Thus, the issue of his possible role and the correctness of the allegations against him, on a prima facie consideration by the trial Court, is something which would be need to be gone into by that Court, since the clear relationship itself and the age etc. of the respondent No. 1, if he is the grand-father of Pargat Singh,

would also be factors which the trial Court may like to consider before adjudicating upon the application under Section 319 Cr.P.C.

11. In view of the above, the matter is remitted to the trial Court, which would apply its mind fresh on the issue, keeping also, obviously, in mind, the ratio of the judgment of the Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab and others (2014) 3 SCC 92.**

12. It is made absolutely clear that while remitting this matter to the trial Court, this Court has not expressed any opinion, whatsoever, on the merits of the allegations against respondents no. 1 to 3 and as such, remittance of the matter will not be, in any manner, construed by the trial Court to be taken as an inference that this Court has opined that a charge/charges should be framed (or not) against them. That decision, as to whether to accept or dismiss the application of the petitioner, would be taken by the trial Court with a wholly independent mind, keeping only in view the allegations made in respect of the alleged commission of each offence that respondents no. 4 to 6 have been charged with, and the role of respondents no. 1 to 3, or any of them, in respect of all/any of such alleged offences.

13 Disposed of as above.

(AMOL RATTAN SINGH)
JUDGE

March 2, 2015
vcgarg/amit rana