

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2901-2015

Date of decision: 01.10.2015

Ramandeep Kaur

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Dilpreet Singh, Advocate for
Mr. Hitesh Kaplish, Advocate
for the petitioner.

Mr. K.D. Sachdeva, Addl. AG, Punjab.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

The short issue that falls for consideration of this Court is, whether the impugned order dated 04.05.2015 passed by the learned Court below, under Section 319 of the Code of Criminal Procedure ('Cr.P.C.' for short), summoning the petitioner to face the criminal trial as an additional accused, in FIR No.100 dated 24.12.2011 under Sections 498-A/406 of the Indian Penal Code ('IPC' for short), registered at Police Station Sadar Phagwara, District Kapurthala, is contrary to the law laid down by the Hon'ble Supreme Court.

Feeling aggrieved against the impugned order dated 04.05.2015 (Annexure P-1), whereby the petitioner was summoned to face the criminal trial with the aid of Section 319 Cr.P.C., petitioner has approached this Court, by way of instant criminal revision petition, praying for setting aside the impugned order.

Notice of motion was issued and operation of the impugned order was stayed.

Learned counsel for the petitioner submits that the impugned order is an order without jurisdiction, having been passed by the learned Court below, contrary to the law laid down by the Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab and others, 2014 (3) SCC 92**. He further submits that petitioner is the sister-in-law of the complainant i.e. brother's wife of the husband of the complainant. Since the complainant had been residing with her parents in District Kapurthala, there was not even a remote scope for the petitioner to indulge in the commission of offence alleged against her. Since she had been living separately in a different district, she had no role to play. This was the reason that investigating agency rightly found the petitioner innocent. However, since the learned Court below had misdirected itself, while passing the impugned order, same is liable to be set aside. He prays for allowing the present petition.

On the other hand, learned counsel for the State submits that the learned Court below has committed no error of law, while passing the impugned order. The order was passed in consonance with the law laid down by the Hon'ble Supreme Court in **Hardeep Singh's case (supra)**. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, instant one has been found to be a fit case, warranting interference at the hands of this Court, while exercising its revisional jurisdiction, for the following more than one reasons.

It is a matter of record that petitioner is sister-in-law of the complainant. She is wife of Randeep Singh who is brother of the husband of the complainant. Petitioner was living separately and in the very nature of things, she would have no role to play in the matrimonial dispute between the complainant and her husband. This seems to be the justified reason that the investigating agency declared the petitioner innocent.

However, since the complainant was bent upon to implicate maximum members of the family of her husband, she moved the application under Section 319 Cr.P.C., for summoning the petitioner as an additional accused. Learned Court below also failed to appreciate the law laid down by the Hon'ble Supreme Court in **Hardeep Singh's** case (supra), while passing the impugned order and the same cannot be sustained.

In the recent past, an unhealthy tendency has developed to involve not only all the family members of the husband but his relatives as well, sometimes even the distant relatives. It was so observed by the Hon'ble Supreme Court in its judgments in the cases of **Preeti Gupta and anr. Vs. State of Jharkhand and anr., 2010 (7) SCC 667** and **Geeta Mehrotra Vs. State of U.P. and another, 2012 (10) SCC 741**. The relevant observations

made by the Hon'ble Supreme Court in para 20 of its judgment in **Geeta Mehrota's** case (supra), which aptly apply to the facts of the present case, read as under: -

*“It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of **G.V. Rao vs. L.H.V. Prasad & Ors. reported in 2000 (2) R.C.R. (Criminal) 290 : (2000) 3 SCC 693** wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:*

“there has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their

defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their cases in different courts.” The view taken by the judges in this matter was that the courts would not encourage such disputes.”

In **Preeti Gupta's** case (supra), the Hon'ble Supreme Court in paras 28 & 30 observed, as under: -

“It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

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It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bonafide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.”

Similar fact situation has been found in the present case.

Complainant has been found making repeated efforts to falsely implicate maximum number of family members of her husband. Further, a bare perusal of the impugned order passed by the learned Court below would show that the impugned order runs counter to the law laid down by the Hon'ble Supreme Court in **Hardeep Singh's** case (supra). The relevant observations made by the Hon'ble Supreme Court in para 99 of the judgment, which can be gainfully followed in the present case, read as under: -

“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.”

The abovesaid judgment of the Hon'ble Supreme Court was followed by this Court in **CRR-771-2015 (Lakhbir Kaur @ Jyoti Vs. State**

of Punjab and another), decided on 15.07.2015. In fact, petitioner has been found identically placed with other co-accused who were rightly not summoned, while passing the impugned order. Since there was not even a prima facie case against the petitioner, she could not have been summoned as an additional accused to face the criminal trial. Having said that, this Court feels no hesitation to conclude that learned Court below has exceeded its jurisdiction, while passing the impugned order and the same cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order has been found to be suffering from patent illegality and also without jurisdiction, being contrary to the judgment of the Hon'ble Supreme Court in **Hardeep Singh's** case (supra), instant petition deserves to be accepted. Consequently, impugned order dated 04.05.2015 (Annexure P-1) is set aside.

Resultantly, with the abovesaid observations made, instant criminal revision petition stands allowed, however, with no order as to costs.

[**RAMESHWAR SINGH MALIK**]
JUDGE

01.10.2015
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