

In the High Court of Punjab and Haryana at Chandigarh

CRR No.3366 of 2015

Date of decision: 14.09.2015

Geetu Madaan and another

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mrs.Rupinder K. Thind, Advocate for the petitioners.

SABINA, J.

Petitioners have filed this petition challenging the order dated 12.8.2015 whereby they were ordered to be summoned to face trial on an application moved by the prosecution under Section 319 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.').

Learned counsel for the petitioners has submitted that the petitioners have been falsely involved in this case merely because of their relationship with the husband of the complainant. Petitioner No.1 is sister of Amit Chopra, whereas, petitioner No.2 is husband of petitioner No.1.

Prosecution story, in brief, is that the marriage of the complainant was solemnized with Amit Chopra on 25.3.2012. Parents of the complainant had given sufficient dowry at the time of her marriage. All the accused started harassing the complainant on

account of insufficiency of dowry. So far as petitioner No.1 is concerned, it has been alleged in the FIR that she had come to her parental home and had demanded money and the father of the complainant had given her ₹50,000/-. However, complainant was not taken back to the matrimonial house. Father of the complainant had told the in-laws family of the complainant that he had been able to arrange ₹ 2,00,000/- . On 18.4.2012, husband of the complainant took her to the matrimonial home. However, complainant was again maltreated and beaten up by her in-laws family. On the asking of the complainant, her father deposited another sum of ₹45,000/- in her account. Thereafter, accused again raised the demand of ₹5,00,000/- but the complainant told them that her father was unable to arrange the said amount. Thereafter, petitioners were asked to reach Delhi as they were residing in Abohar and they started demanding money and when complainant refused to give money, she was given beatings and kick blows in her abdomen. No medical treatment was provided to the complainant. On 5.5.2012, brother of the complainant took her to her parental house and got her medically treated.

Section 319 Cr.P.C. reads as under:-

“Power to proceed against other persons appearing to be guilty of offence:-

(1)Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any

offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard.

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

Thus, as per the above provision, the Trial Court may summon any person to face the trial as an accused if there is sufficient material available against the said person during trial to proceed against him.

While dealing with the powers under Section 319 Cr.P.C.,

the Apex Court in 'Hardeep Singh versus State of Punjab and others, 2014(1) R.C.R. (Criminal) 623, has held as under:-

“Question Nos. 1 & III

Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND

Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused. ? Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the

trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the charge-sheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Q.II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by crossexamination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. IV

Q. IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an

accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No. V

Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh.

The matters be placed before the appropriate Bench for final disposal in accordance with law explained hereinabove.”

In the present case, a perusal of the FIR reveals that the specific allegations have been levelled against the petitioners. Although, petitioners were found innocent during investigation but during trial, complainant appeared and deposed as per the contents of the FIR. Thus, there was sufficient material before the trial Court to summon the petitioners to face trial as additional accused as there were allegations against them qua demand of dowry and harassment meted out to the complainant. In fact, as per the FIR, petitioner No.1 was given ₹50,000/- by the father of the complainant as per her demand.

No ground for interference is made out.

Dismissed.

**(Sabina)
Judge**

September 14, 2015
arya