

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

Crl.Rev.No.696 of 2015

Date of decision : 10.3.2015

Ravi Kumar

....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

....

Present : Mr. Shokeen Singh Verma, Advocate
for the petitioner.

MAHESH GROVER, J.

The petitioner impugns the order of the learned trial court dated 27.1.2015 by which the application moved by the complainant under Section 319 Cr.P.C. was dismissed.

Learned counsel for the petitioner with reference to the impugned order contends that it is contrary to the well settled proposition of law which mandate the summoning of an accused in the exercise of powers under Section 319 Cr.P.C if evidence to that extent comes on record. In this context he has referred to the statement of PW1 where the witness has stated as under :-

“.....On 31.8.2014, my sister telephonically told me that her sister-in-law Soni, her husband Amit (Nandoi) and maternal uncle of Aashish namely Bharam Parkash had also come at her matrimonial home and

harassing and nagging her with her in-laws. On 1.9.2014, I went to the house of matrimonial home of my sister at village Chuchakwas where accused Babli, Bharam Parkash, Soni, Ram Kishan and Amit were found present. These persons were levelled different type of allegations on my sister and tortured her. At that time my sister Nikku also told me that Aashish was also harassing her through telephonically. At that time I asked to my sister to accompany me but she refused and insisted to remain there. Babli, Bharam Parkash, Soni, Ram Kishan and Amit were threatened to my sister in my presence to teach her in lesson and to kill her. I counsel to those persons and returned to my home. On 3.9.2014, accused Ram Kishan telephonically intimated me in the morning that my sister Nikky had died.....”

From the above learned counsel for the petitioner wants this court to infer that there are specific allegations against the persons, namely, Babli, Bharam Parkash, Soni, Ram Kishan and Amit and hence their complicity in the commission of the offence under Section 304-B IPC stands established.

I have considered the arguments raised before this Court. The law under Section 319 Cr.P.C. would warrant

summoning of an additional accused only if there is a quality evidence available on record sufficient in the ordinary course to lead to a conviction, on its acceptance by the court of competent jurisdiction. The Hon'ble Supreme Court in *Hardeep Singh v. State of Punjab and others*, **2014(1) RCR (Criminal) 623** has observed as under :-

“98. Power under Section 319 Cr.P.C. is a discretionary and an extra- ordinary 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.”

If the aforesaid evidence is tested on the basis of observations made by the Hon'ble Supreme Court as also the language of the statute, I am of the view that the allegations against the respondents are not inspiring enough to warrant their summoning under Section 319 Cr.P.C. particularly when there is a tendency of complainants in such like matters of marital discord to expand the arena of accused persons by implicating relatives.

For the aforesaid reasons, while affirming the order of the learned trial court, I dismiss the instant petition.

10.3.2015
dss

(MAHESH GROVER)
JUDGE