

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

Crl. Misc. No.M-13991 of 2016 (O&M)

Date of Decision: 10.05.2016

Urmila

....Petitioner

Versus

State of Haryana and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. Ashit Malik, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

Criminal Misc. No.13621 of 2016

This application has been moved for placing on record Annexure P-9.

Criminal Misc. Application is allowed and Annexure P-9 is taken on record.

Criminal Misc. No.M-13991 of 2016

The present petition has been filed under Section 482 Cr.P.C for quashing of Order dated 22.09.2015 (Annexure P-3) passed by Judicial Magistrate Ist Class, Panipat and judgment dated 03.03.2016 passed by the Sessions Judge, Panipat, whereby, the application moved by the petitioner under Section 319 Cr.P.C for summoning respondents No.2 to 5 as an additional accused has been dismissed.

Briefly the facts of the case are that petitioner-Urmila was married with Kulvinder on 17.11.2010. Thereafter, some differences arose between the parties. Petitioner made a complaint alleging certain allegations of demand of dowry and harassment and on the basis of said complaint, the FIR was registered against her husband-Kulvinder, sisters-in-law Pammi and Suman and their husbands Bijender and Surender, respectively. The case was investigated into by the police and challan was presented against husband of the petitioner under Sections 323, 498-A, 406 and 506 IPC. However, Pammi, Suman and their husbands-Bijender and Surender were found innocent and were kept in column No.2 of the challan. After recording the statements of PW-1 Urmila (the present petitioner) and PW Gayatri Devi, ASI, an application was moved under Section 319 Cr.P.C for summoning Bijender, Surender and their wives Pammi and Suman as an additional accused, which was dismissed on 22.09.2015 by the trial Court.

The said order was challenged by the petitioner by way of filing revision petition before the Sessions Judge, Panipat and the same was also dismissed on 03.03.2016.

Both the orders dated 22.09.2015 as well as 03.03.2016 passed by the trial Court as well as by the Revisional Court are subject matter of challenge before this Court in the present petition.

Learned counsel for the petitioner submits that there were specific allegations against respondents No.2 to 5 for demand of dowry and harassment thereof in the FIR as well as in the statements of the witnesses, still, they were found innocent. Learned counsel also submits that even in the statement of petitioner's husband-Kulvinder, recorded by the Judicial Magistrate Ist Class in the application filed by the petitioner under Section 12 of the Protection of Women from Domestic Violence Act,

the fact regarding giving of beatings and harassment at the hands of respondents No.2 to 5 was also specifically mentioned. A civil suit for permanent injunction was also filed by Pammi Devi and Suman Bala, sisters-in-law of the petitioner against their father, mother, brother and sister for restraining them from alienating the agriculture land, which shows that relations between the petitioner and private respondents were not cordial. Learned counsel also submits that FIR No.327 dated 21.06.2014 was also got registered at the instance of petitioner against respondents No.2 to 5 for outraging her modesty and giving severe beatings to her. At the end, learned counsel for the petitioner submits that as the involvement of respondents No.2 to 5 is apparent, therefore, there are bright prospects of their conviction on the basis of evidence adduced by the witnesses. Learned counsel for the petitioner prays for setting aside the impugned order passed by both the Courts below and for summoning respondents No.2 to 5 as an additional accused to face trial along with other accused.

Heard the arguments advanced by learned counsel for the petitioner and have also perused the impugned orders under challenge.

The facts being close relatives; lodging of FIR as well as conducting of investigation in the case, resultant filing of challan against husband of the complainant and finding of respondents No.2 to 5 as innocent during investigation are not disputed. It is also not disputed that an application was moved under Section 319 Cr.P.C after recording the statements of the petitioner and the Investigating Officer and the same was dismissed and thereafter, the revision petition filed before the Sessions Judge, Panipat was also dismissed. The only allegation against respondents No.2 to 5 is that they, in connivance with main accused, who is husband of the petitioner, harassed the petitioner for demand of dowry. In the FIR, total five accused were named, the challan was presented

against husband of the petitioner only and the allegations qua remaining four accused were found to be false. On perusal of allegations levelled in the FIR as well as statements of two prosecution witnesses including the petitioner, it appears that only the general allegations are there as neither any specific role has been attributed nor any particular date and time has been mentioned as to when any demand was made or petitioner was harassed.

Now it is to be seen as to whether there was sufficient evidence before the Summoning Court to summon respondents no.2 to 5 as an additional accused to face trial along with the accused, who is already facing trial. It has also come on record that a Civil Suit was filed by the additional accused in the year, 2011 i.e. prior to lodging of the present FIR. The connivance between the sisters and their brother i.e husband of the complainant for harassment has not been proved. When litigation between husband of the complainant and his sisters was pending, then there was no reason or occasion for them to interfere in the matrimonial life of the complainant along with their husbands in any manner.

Section 319 Cr.P.C is reproduced as under for resolving the present controversy, :-

“319. 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.”

As per provisions of Section 319 Cr.P.C., in case, it appears to the Summoning Court that any other person, who has not been challaned, is also involved in the commission of offence, can be summoned and tried together with the accused, who are facing trial. This remedy can be availed when the Court comes to the conclusion that during an inquiry or trial, it appears to the Court that the persons sought to be summoned are also involved in the commission of offence.

While exercising powers under Section 319 Cr.P.C., it is to be seen by the Summoning Court as to what role has been played by the person, who is sought to be summoned, whether said person is also involved but has not been challaned. Power under Section 319 Cr.P.C is an extraordinary power, which is to be exercised if, compelling reasons are there or more than *prima facie* case is made out. Only on the basis of vague and general allegations or on recording casual statement of the witnesses, such person can't be summoned. The Court is to arrive at a conclusion/satisfaction that the evidence adduced on behalf of the prosecution, if goes un-rebutted, would lead to conviction of persons sought to be summoned. This extraordinary power can be exercised by the Court *suo-moto* or on an application moved by the complainant/prosecution. In case, it appears to the Court that there is an

evidence, which shows the involvement of such person in commission of offence. The Summoning Court must be satisfied that there exists a possibility that the person sought to be summoned can be convicted.

The controversy, in hand, is squarely covered by the decision rendered in **Sarojben Ashwinkumar Shah etc. vs State of Gujarat and others 2011(3) RCR (Criminal) 852**, wherein, it was held that the Court while exercising the powers under Section 319 of the Code, must keep in view full conspectus of the case including the stage at which the trial has proceeded already and the quantum of evidence collected till then. It was further held that power to summon accused under Section 319 of the Code is an extraordinary power and should be used very sparingly and only if compelling reasons exist. This power cannot be exercised only on the basis of conducting a fishing inquiry.

This Court in case **Hasin and another vs State of Haryana 2011(2) RCR (Criminal) 429**, has held that vague and ambiguous or casual statement made by witnesses cannot be made the basis to summon the person to face trial under Section 319 of Code of Criminal Procedure.

Hon'ble the Apex Court in case **Ram Singh and others vs Ram Niwas and another 2009(3) RCR (Criminal) 501** has held that power under Section 319 Cr.P.C must be exercised very sparingly and not as a matter of course. It is further held that it is error to summon a person as additional accused on the ground that a prima-facie case was made out. The court is to arrive at a satisfaction that evidence adduced on behalf of the prosecution, if un-rebutted, would lead to conviction of the persons sought to be added as accused in this case.

Hon'ble the Apex Court in case **Mohd. Shafi vs Mohd. Rafiq and another 2007(2) RCR (Criminal) 762** has held that before the court exercises its discretionary jurisdiction in terms of Section 319 of the Code

of Criminal Procedure, it must arrive at the satisfaction that there exists a possibility that the accused so summoned in all likelihood would be convicted.

In judgment of Hon'ble the Apex Court in ***Hardeep Singh and another vs State of Punjab and others 2014(1) RCR (Criminal) 623***, it has been held that the degree of satisfaction for summoning a person under Section 319 Cr.P.C would be the same as for framing of charge but satisfaction of the Court is to be relevant in case and only when, the Summoning Court is of the opinion that some other persons are also involved in the commission of the offence. Not only *prima facie* case is to be established from the evidence led before the Court but that material, which has come in the form of statement, is sufficient for framing of charge.

After perusing the statement of the complainant as well as by considering the role assigned to the above said persons, the application moved by the prosecution under Section 319 Cr.P.C was rightly dismissed and thereafter revision was also dismissed.

In view of the facts as mentioned above and also after perusal of allegations levelled against respondents No.2 to 5, nothing has come on record as to how the said respondents were harassing the complainant as both the married sisters-in-law were residing separately alongwith their husbands. Relations were not cordial between the parties and as such, there was no occasion with them to interfere with the matrimonial life of the petitioner. Learned counsel for the petitioner has not been able to show any evidence, which has come even in the statements of two witnesses recorded by the Summoning Court as to how respondents No.2 to 5 were involved in the commission of offence. The allegations levelled against them were found to be false and they were kept in column No.2. For summoning as an additional accused, *prima facie* case is to be seen to

show the involvement of persons, who have been sought to be summoned. It is to be seen by the Summoning Court as to how the persons, who have been sought to be summoned, are also involved in the commission of offence to face trial along with accused, who is already facing trial, whereas, in the present case, no evidence has come on record to show/prove the connivance of respondents No.2 to 5 with the main accused, who is facing trial. Moreover, there is a tendency to implicate all family members and even the remote relatives, who have no concern in the affairs of family and especially in the matrimonial dispute. Both the sisters are married and they are not having cordial relations with their parents and a civil suit between them is also pending. Not only the married sisters have been implicated but their husbands have also been named in the FIR, whereas, no evidence has come on record by way of statements of witnesses to prove their involvement in the commission of offence.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and the petition, being devoid of any merit, is hereby dismissed.

10.05.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE