

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

Crl. Misc. No.M-35582 of 2015 (O&M)

Date of Decision: 05.02.2016

Sonia Suhag

....Petitioner

Versus

State of Haryana

....Respondent

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. Jagmohan S. Ghumman, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

Crl. Misc. No.36373 of 2015

This application has been moved for impleading Manoj, Davinder, Ruchi and Vinod Sharma as respondents No.2 to 5 being necessary party.

Criminal Misc. Application is allowed and Manoj, Davinder, Ruchi and Vinod Sharma are hereby impleaded as respondents No.2 to 5.

Crl. Misc. No.M-35582 of 2015

This petition has been filed under Section 482 Cr.P.C for quashing of order dated 24.09.2014 passed by the Judicial Magistrate Ist Class, Gurgaon and order dated 26.05.2015 passed by the Sessions Judge, Gurgaon, whereby, the application moved by the petitioner under Section 319 Cr.P.C as well as the revision petition filed against the said

order has been dismissed.

Briefly the facts of the case are that FIR No.256 dated 30.07.2009 was registered on the basis of complaint made by complainant-petitioner against accused persons, namely, Manoj, Devender, Ruchi and Vinod along with other accused, who are facing trial in said FIR. However, said persons, namely, Manoj, Devender, Ruchi and Vinod were found innocent during investigation. Thereafter, an application was moved under Section 319 Cr.P.C by the prosecution for summoning of said persons as additional accused after examination of complainant as PW-1 but said application was dismissed vide order dated 24.09.2014 passed by the Judicial Magistrate Ist Class, Gurgaon. Said order was challenged by way of filing revision petition before the Sessions Judge, Gurgaon, which was also dismissed vide order dated 26.05.2015. The above said orders passed by Judicial Magistrate Ist Class and Sessions Judge are subject matter of challenge in the present petition..

Learned counsel for the petitioner submits that the persons, who were sought to be summoned have played specific roles in commission of offence and were also involved other than the accused, who are facing trial. Not only their names were mentioned in the FIR but specific allegations were also levelled against them, still they were declared innocent. Learned counsel also submits that the statement of PW-1, coupled with FIR and the testimony of PW3 clearly shows the involvement of said persons, still, the application has been dismissed. The role and involvement of said persons has not been considered by the Courts below. It is also the argument of learned counsel for the petitioner that while dismissing the application of the petitioner, no reason, whatsoever, has been mentioned, whereas, for summoning a person as additional accused, *prima facie* case is to be seen.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned orders as well as other documents available on the file, including the statement of the complainant as well as the allegations levelled in the FIR.

The lodging of FIR against the accused persons and declaration of respondents No.2 to 5 innocent during investigation, is not disputed. Subsequent whereupon, application filed under Section 319 Cr.P.C against respondents No.2 to 5 has been dismissed and thereafter, the revision petition filed against the said order has also been dismissed. Both the orders have been challenged on the ground that the said persons were also involved along with accused, who are facing trial. They were specifically mentioned in the FIR and specific roles have also been specified attributed to them not only in the FIR but in the statement of the complainant-petitioner as well.

For the present controversy, Section 319 Cr.P.C is necessary, which is reproduced as under :-

“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 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.

In the present case, no doubt, the names of proposed accused were mentioned in the FIR but on perusal of statement of complainant-petitioner, Sonia Suhag, it appears that nothing has been said to show their involvement in demanding any dowry or causing any harassment thereof. Their names have been mentioned but any specific role has not been assigned.

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 used sparingly, only if, compelling reasons are there. Only on the basis of vague and general allegations or on recording casual statement of the witnesses, such person can't be called for. The Court is to arrive at a conclusion/satisfaction that the evidence adduced on behalf of the prosecution, if 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, 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 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 unrebutted, 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.

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 petitioner has been dismissed and revision has also been dismissed.

As per judgment of Hon'ble the Apex Court in **Hardeep Singh and another vs State of Punjab and others 2014(1) RCR (Criminal) 623**, 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, the trial Court is of the opinion that some other persons were 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.

In view of the facts, 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.

05.02.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE