

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-3703 of 2016

DATE OF DECISION: 02.02.2016

Maninder Kaur

.....Petitioner

Versus

State of Haryana and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspaper may be allowed to see judgment? (Yes)**
2. **To be referred to reporters or not? (Yes)**
3. **Whether the judgment should be reported in the Digest? (Yes)**

Present:- Mr. Angel Sharma, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present petition has been filed for setting aside impugned order dated 12.8.2015 passed by Sub Divisional Judicial Magistrate, Guhla (Annexure P-4), vide which, the application filed by the petitioner-complainant under Section 319 Cr.P.C. for summoning Sahab Singh, Palwinder Kaur @ Pinder Kaur, Fashion Singh and Balwinder Kaur as an additional accused to face trial in case FIR No. 83 dated 2.7.2014 registered under Sections 406/498-A/506/323 IPC at Police Station Guhla has been dismissed. Aforesaid order was challenged by way of filing revision petition before Additional Sessions Judge, Kaithal, which was also dismissed vide order dated 16.12.2015.

Briefly, the facts of the case are that petitioner got married with accused-Subeg Singh on 13.2.2012. As per allegations in the complaint,

petitioner-complainant was harassed constantly by her inlaws on the pretext of bringing inadequate dowry. A female child was also born out of the said wedlock but still her in-laws were unhappy. As per allegations in the FIR, Panchayat was also convened on various occasions and the matter was even compromised but it could not fructify. Thereafter the petitioner filed a complaint, on the basis of which, FIR No. 83 dated 2.7.2014 under sections 406/498-A/506/323 IPC at Police Station Guhla, District Kaithal was registered but challan was presented only against accused-husband, namely, Subeg Singh. An application was moved under Section 319 Cr.P.C. for summoning of Sahab Singh, Palwinder Kaur @ Pinder Kaur, Fashion Singh and Balwinder Kaur as additional accused as they were found innocent during investigation but the same was dismissed on 12.8.2015 by Sub Divisional Judicial Magistrate, Guhla. Against the said order, the petitioner preferred revision petition before Additional Sessions Judge, Kaithal, which was also dismissed on 16.12.2015.

The impugned orders passed by both the courts below are subject matter of challenge in the present petition.

Learned counsel for the petitioner contends that both the Courts below have not taken into consideration the specific allegations levelled against the persons sought to be summoned and they were wrongly declared innocent. The petitioner-complainant appeared in the witness box as PW-5 and levelled specific allegations with regard to cruelty and harassment against the said persons but still the application has been dismissed. Learned counsel also submits that both the orders are passed without application of mind and are contrary to the ratio of law laid down in the case of **Hardeep Singh and another Vs. state of Punjab and another** 2014 (1) RCR (Criminal) 623.

Heard the arguments advanced by learned counsel for the

petitioner and have also gone through the impugned orders and other documents available on the file.

The solemnization of marriage between the petitioner and accused-Subeg Singh has not been disputed. It is also not disputed that FIR was registered against the accused-persons under Sections 406/498-A/506/323 IPC and accused-respondents No.2 to 5 were declared innocent during investigation. After recording the statement of petitioner-complainant as PW-5 and Sukhwant Singh as PW-6, an application was moved by the prosecution under Section 319 Cr.P.C. for summoning respondents No. 2 to 5 as an additional accused to face trial along with the main accused, which was dismissed and thereafter the impugned order was challenged by way of filing revision petition, which was also dismissed. Both the impugned orders have been challenged only on the ground that specific allegations were levelled against respondents No.2 to 5 not only in the FIR but also in the statements made by PW-5 and PW-6 and said persons were wrongly found innocent during investigation, whereas, they have played an active role.

For resolving the controversy in hand, Section 319 Cr.P.C. is relevant, 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 the 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., any person against whom the evidence has been brought on record and there is likelihood of his conviction can be summoned to face trial along with other accused, who are facing trial. It is also to be seen by the Summoning Court that the evidence brought on record would show that the person sought to be summoned is also involved in commission of offence or some material or evidence has come on record to justify the summoning order.

In the present case, the statements of PW-5 and PW-6 are only the reiteration of their earlier statements. Neither any specific date, month or year has been mentioned as to when the demand was made or harassment was caused to the complainant. Although allegations of beatings are there but no medical evidence was produced on record. Only the general allegations were levelled and no specific role was attributed. The allegations were considered by the investigating agency and respondents No.2 to 5 were found innocent during the investigation as sufficient evidence was not found against them for presentation of challan. Subsequently on the basis of same allegations, which were levelled in the statements recorded by PW-5 and PW-6, an application was moved for summoning respondents No.2 to 5 to face trial as additional accused along

with the main accused. Even in cross-examination, the complainant has not been able to tell as to when Panchayat was called and what compromise was effected. The petitioner-complainant has not been able to show any evidence as to how these persons were also involved in the commission of offence.

In view of the facts as well as law position explained above, there is no evidence available on record to interfere with the orders passed by both the Courts below and as such there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is dismissed.

February 02, 2016
pooja

(DAYA CHAUDHARY)
JUDGE