

Crl. Misc No. M-4609 of 2013

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

**Crl. Misc No. M-4609 of 2013
Date of decision : 10.11.2016**

Ran Singh and others

....Petitioners

versus

State of Haryana

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Kuldeep Singh, Advocate
for the petitioners.

Mr. D.R. Singla, DAG, Haryana

RITU BAHRI, J.

The present petition has been preferred against the order dated 08.01.2013 passed by the Court of learned Additional Sessions Judge, Gurgaon whereby revision petition filed by the petitioners against order dated 22.10.2012 passed by learned trial Court, Gurgaon was dismissed, vide which the petitioners have been summoned by the trial Court under Section 319 Cr.P.C to face trial under Sections 498-A/323/506/406/34 IPC and petitioner No. 1 has been summoned under Section 354 IPC and petitioner No. 4 has been summoned under Section 342 IPC.

Brief facts of the case are that F.I.R No. 157 dated 04.09.2007 was lodged on the complaint made by Chanchal daughter of Siri Dutt with the allegations of cruelty on account of demand of dowry, outraging her modesty, causing her abortion etc against her husband and his family members. After investigation, challan was presented against accused No. 1-

Raj Kumar (husband of the complainant) for commission of offence punishable under Section 498-A/323/506/406/342/34 IPC whereas remaining accused Ran Singh, Smt. Devki, Prem Kumar, Smt. Pushpa, Smt. Savita, Rajesh, Deen Dayal were found to be innocent and were kept in column No. 2 at the time of filing final report under Section 173 Cr.P.C.

Accused Raj Kumar was charge sheeted and statement of Chanchal was recorded, who leveled allegations against all those persons, who were left by the police.

Thereafter, an application under Section 319 Cr.P.C filed by the prosecution for summoning the accused persons/petitioners, was allowed, vide order dated 22.10.2012 passed by learned trial Court, Gurgaon and the petitioners were summoned by the trial Court to face trial under Sections 498-A/323/506/406/34 IPC and petitioner No. 1 has been summoned under Section 354 IPC and petitioner No. 4 has been summoned under Section 342 IPC.

The revision petition filed against the aforesaid order by the petitioners, was also dismissed, vide impugned order dated 08.01.2013.

Learned counsel submits that once the petitioners have already been found to be innocent by the Investigating Officer in its investigation, they should not have been summoned on an application filed by the prosecution. The complainant has leveled vague and general allegations against the petitioner just to harass and humiliate them.

Learned counsel has further argued that marriage of son of petitioner Nos. 1 and 2 was solemnized with the complainant on 27.11.2005

and petitioner No. 1 has already disowned his both sons much prior to lodging of the present F.I.R on 16.10.2006 and also got published in the newspaper and copies of affidavit and cutting of newspaper dated 31.01.2007 are attached as Annexure P-8 and P-9. Further complainant and her husband were residing separately in the house of one Sundra Devi w.e.f 20.11.2006 to 19.02.2007.

Further petitioner No. 1 had also disowned petitioner No. 3 who was also residing separately with his own family. Copy of ration card is Annexure P-17.

Learned counsel further submits that after recording the evidence, the complainant has also expired on 22.05.2012, as per death certificate Annexure P-7 and in these circumstances, it would be impossible for the Court to unravel the truth as the petitioner will not be able to cross examine the complainant which would seriously jeopardize the offence of the petitioners.

Reference has been made to Section 319 Cr.P.C, which reads 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

Hon'ble the Supreme Court in the case of **Michael Machado vs. Central Bureau of Investigation, 2000(2) SCC 262** has gone in detail and set out principles which are to be followed for summoning the accused under Section 319 Cr.P.C. In paragraph 14, it has been held as under

14. *The court while deciding whether to invoke the power under Section 319 of the Code, must address itself about the other constraints imposed by the first limb of sub-section (4), that proceedings in respect of newly added persons shall be commenced afresh and the witnesses re-examined. The whole proceedings must be re-commenced from the beginning of the trial, summon the witnesses once again and examine them and cross-examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are quite a large in number the court must seriously consider whether the objects sought to be achieved by such exercise is worth wasting the whole labour already undertaken. Unless the court is hopeful that there is reasonable prospect of the case as against the newly*

brought accused ending in conviction of the offence concerned we would say that the court should refrain from adopting such a course of action.

Reference at this stage can further be made to a judgment of Hon'ble the Supreme Court of India in a case of ***Harinarayan G. Bajaj vs. State of Maharashtra and others, 2010(1) RCR Crl 631*** wherein Hon'ble the Supreme Court in para 11 while interpreting Section 319(4) Cr.P.C has held as under:-

11. Even a glance at this Section suggests that there is no escape from commencing the proceedings afresh and also that the witnesses have to be re-heard. Clause (a) is the basic provision and the use of the words 'proceedings' and the term 'commence afresh' has its own significance. If we accept the contention of Shri Naphade that the newly joined accused has no right of cross-examination, it would mean that on being joined under Section 319 (1), Cr.P.C., the only step that would be required would be framing of charge against him. In that, there would be a complete denial to such accused of an important right of cross-examination of the witnesses before the framing of the charge. It would only then mean that such accused would remain a mute spectator till the framing of the charge.

In the present case, the complainant has died on 22.05.2012 and an application under Section 319 Cr.P.C to summon petitioners was allowed on 22.10.2012 and the petitioners have thus lost their opportunity

to cross examine the complainant. Thus, the present petitioner would remain a mute spectator till the framing of the charge.

Applying the ratio of the above mentioned and and the fact that now the petitioners will not be able to cross examine the complainant, as she died on 22.05.2012, which would seriously jeopardize the offence of the petitioners, orders dated 22.10.2012 and 08.01.2013 are hereby set aside.

The revision petition stands allowed.

10.11.2016
G Arora

(RITU BAHRI)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>