

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

Crl. Misc. No.M-4456 of 2016 (O&M)

Date of Decision: 22.03.2016

Nirmala

....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. Bhupesh Dogra, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

Crl. Misc. No.9576 of 2016

This application has been moved for placing on record the final report under Section 173 Cr.P.C.

Criminal Misc. Application is allowed and the final report is taken on record.

Crl. Misc. No.M-4456 of 2016

This petition has been filed under Section 482 Cr.P.C for setting aside the impugned orders dated 30.10.2015 and 19.01.2016 passed by the Judicial Magistrate Ist Class and Additional Sessions Judge, Rewari, respectively, whereby, the application moved by the prosecution under Section 319 Cr.P.C as well as the revision petition have been

dismissed.

On the basis of the complaint made by the petitioner, FIR No.366 dated 25.08.2011 was registered against respondents No.2 to 5 under Sections 498-A/406/34 IPC. Certain allegations of demand of dowry and mis-appropriation of *istridhan* were alleged against Yogesh (brother-in-law), Sarita (sister-in-law), Hem Kishore (husband) and Usha (mother-in-law) by the complainant-petitioner. Charges under Sections 498-A/406/34 IPC were framed only against two accused. Respondents no.2 and 3 were found innocent. On recording of statement of the complainant, certain allegations were alleged against respondents No.2 and 3. Thereafter, an application under Section 319 Cr.P.C was moved by the complainant through prosecution for summoning them as an additional accused as they were also involved in the commission of offence along with other accused, who are facing trial. Reply to the application was filed. The said application was dismissed on 30.10.2015 by the Judicial Magistrate Ist Class, Rewari and the same was challenged by way of filing revision petition before the Additional Sessions Judge, Rewari, which was also dismissed vide Order dated 19.01.2016.

Aggrieved by aforesaid orders, the present revision petition has been filed by raising various grounds.

Learned counsel for the petitioner submits that the allegations were levelled against respondents No.2 and 3 with specific roles but they were declared innocent wrongly by the Investigating Agency. Even in the statement of the complainant, not only specific allegations have been levelled but specific roles were also attributed but still, the application has been dismissed and revision filed against the said order has also been dismissed. Learned counsel also submits that on the basis of allegations against the persons sought to be summoned, there were chances for their

conviction and the same has not been considered.

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.

Admittedly, respondents No.2 and 3, who were sought to be summoned, were found innocent during investigation and were kept in column No.2. Accused-Usha, who is facing trial, is not the real mother-in-law of the complainant-petitioner. The mother of accused-Hem Kishore had earlier died and his father got re-married with accused-Usha. Respondents no.2 and 3 i.e Yogesh and Sarita are children of Usha. At the time of alleged occurrence, both the children were in the age group of 11 to 14 years. During investigation, they were found innocent. The only allegation against them is that they also used to support other accused and taunt the complainant for bringing less dowry and demanded Honda City car. The allegations of giving beating to the complainant were there, whereas, there was no medico legal report regarding any injury on the person of complainant. Moreover, accused-Hem Kishore (husband) and Usha (mother-in-law) of the complainant are already facing trial. During investigation also, no evidence was collected against them. It was found that Yogesh was about 11/12 years and Sarita was 13/14 years of age. No other new evidence was brought on record against the persons sought to be summoned.

As per provisions of Section 319 Cr.P.C., the Summoning Court has to be satisfied from the evidence led by the complainant party that the person, who are sought to be summoned, is also involved in the commission of offence. No evidence was collected during investigation or subsequently by way of recording statement of the complainant on the basis of which, the said persons could have been summoned. Mere

suspicion about involvement of other persons is not enough to summon them as an additional accused.

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.

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 but 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 in commission of offence but 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.

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 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 Summoning 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.

Both the Courts below have categorically mentioned that the respondents sought to be summoned were not even residing with the main accused and complainant. They are not brother and sister of husband of the complainant. They are children of step mother of husband of complainant. At the time of occurrence, they were in the age group of 11 to 14 years. Moreover, no other additional or new evidence was there in the statement of complainant. No evidence was there against them which would warrant their conviction.

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.

22.03.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE