

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

Crl. Rev. No.1567 of 2015 (O&M)

Date of Decision: 15.01.2016

Mahipal

....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. Ajit Sihag, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

Crl. Misc. No.14669 of 2015

There is delay of five days in filing of the present revision petition.

For the reasons mentioned in the application, the delay of five days in filing of the present revision petition is condoned.

Criminal Misc. Application is accordingly disposed of.

Crl. Rev. No.1567 of 2015

The present revision petition has been filed to challenge the impugned order dated 09.01.2015 passed by the Additional Sessions Judge, Bhiwani, whereby, the application moved by the petitioner under Section 319 Cr.P.C to summon respondents No.2 to 6 as additional accused has been dismissed.

FIR No.30 dated 13.04.2014 was registered under Sections 498-A/304-B IPC at Police Station GRP, Hisar and the challan was presented against the accused-Naresh. On recording of statement of the complainant, an application was moved under Section 319 Cr.P.C by the complainant through public prosecutor for summoning Sarbati, Ramesh Kumar, Kamlesh, Guddi and Sushila as additional accused, which was dismissed vide order dated 09.01.2015. The said impugned order dated 09.01.2015 is under challenge in the present revision petition.

Learned counsel for the petitioner submits that the Summoning Court has not properly appreciated the evidence available on record and the application has been dismissed. The names of respondents No.2 to 6 were specifically mentioned in the FIR with specific allegations. Even in the statement of the complainant recorded in the Court, it was clearly mentioned that said respondents No.2 to 6 were present at the place of occurrence and not only they demanded dowry but have also played an active role. The petitioner gave an amount of ₹ 5 lacs to the husband of the deceased for purchasing the car. Even a panchayat was also convened on 11.07.2013, wherein, accused persons admitted their mistake and also gave an assurance that they will treat the daughter of the petitioner in a nice manner.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on the file.

The above-stated facts have not been disputed. The FIR was registered on the basis of statement of Mahipal, the father of deceased-Monika, wherein, certain allegations for demand of dowry and harassment thereof against the accused persons were levelled but respondents No.2 to 6 were found innocent during inquiry. Subsequently, on the basis of

statement made by complainant-Mahipal, while appearing as PW-3, he has stated that in addition to accused-Naresh, aforesaid persons were also involved in the commission of offence. Reply to the application was also filed, wherein, it was mentioned that the application was moved in order to delay the trial so that accused Naresh could be kept behind bars for a longer period. Ultimately, the application was dismissed on the ground that neither any allegations were levelled against the said persons nor any role was attributed to them. Moreover, the said respondents were residing separately as main accused Ramesh used to live at Silligurri, Nagpur.

The findings recorded by the Summoning Court in para No.10 of the impugned order are reproduced as under :-

“10. From the above discussion, it appears that complainant PW-3 Mahipal, has neither named elder brother-in-law (Jeth) Ramesh, sister-in-law (Jethani) Kamlesh, sister-in-law (Nanad) Guddi, niece (Bhanji) Sushila and mother-in-law Sarbati, in application Mark-A, nor attributed any specific roles to them in his application Ex.P1. Accused sought to be summoned are living separately. Accused Ramesh used to live at Silliguri, Nagpur. Guddi was married lady and lives far away in another State. Sushila is her daughter. Sarbati-mother-in-law of Monika (since deceased) is aged about 77 years. Above named accused were living at separate places or having their separate house. Monika, was permitted to appear in JBT examination even after the marriage. She passed out her computer course also. It appears that complainant Mahipal, in order to pressurize the accused-party named elder brother-in-law Ramesh, elder sister-in-law (Jethani), Kamlesh, sister-in-law (Nanad) Guddi, niece (Bhanji) Sushila and mother-in-law Sarbati, of his daughter Monika, in his statement in the Court under some calculated move. There is no prima-facie evidence on the record on the basis of which the Court

can satisfy its conscience that there is more than prima-facie evidence on the basis of which it can be concluded that accused persons sought to be summoned can be convicted.”

On perusal of application moved under Section 319 Cr.P.C; the allegations levelled in the FIR; by considering the reply to the application as well as the impugned order, it appears that although the complainant has named brother-in-law Ramesh (*Jeth*), sister-in-law Kamlesh (*Jethani*), sister-in-law Guddi (*Nanad*), niece Sushila (*Bhanji*) and Sarbati (*mother-in-law*) of his daughter but no specific role has been attributed to said accused persons and the complainant wanted to implicate said persons being close relatives of accused Naresh. The only allegation against main accused-Naresh is that he demanded a sum of ₹ 10 lacs as dowry for the marriage of his niece. It has also been admitted by PW-3 Mahipal that the dispute was compromised in the police Station. Respondent no.2-Sarbati-the mother of the accused is 77 years of age. Respondent no.3-Ramesh Kumar was employed at *Silliguri* in some transport company, whereas, the main accused-Naresh was employed with one private school. Guddi, the sister of accused-Naresh, was married in the year, 1990 and Sushila, the daughter of Guddi and sister of accused Naresh, have been sought to be summoned even though, they were living separately.

On the basis of statement of the complainant, neither any *prima facie* evidence came on record on the basis of which, the Court could satisfy itself that these persons were also involved in the commission of offence. It has been held in various judgments that against the person, who is sought to be summoned, there should be a strong and cogent evidence to show that he was also involved in the commission of offence and in the absence thereof, such person cannot be summoned.

Moreover, it has also been observed in various judgments that

normally, the complainant try to make all efforts to rope all family members of husband, even those persons, who are residing separately and moreover, there was no justification for their presence at the place of occurrence or for demand of dowry or any harassment thereof.

It has been held in the judgment of Hon'ble the Apex Court in case ***Hardeep Singh vs State of Punjab and others 2014(1) RCR (Criminal) 623*** that power under Section 319 Cr.P.C is discretionary and an extra-ordinary, which is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It can be exercised only where the strong and cogent evidence has come on record against the persons sought to be summoned.

The observations made by Hon'ble the Apex Court in the said judgment in paras No.98 and 99 are reproduced as under:-

“98. Power under Section 319 Cr.P.C is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

99. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima-facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un-rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from

exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C., the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted.' There is, therefore, no scope for the Court acting under Section 319 Cr.P.C to form any opinion as to the guilt of the accused."

In view of the facts as mentioned above, it appears that respondents No.2 to 6 were not involved in the commission of offence. The impugned order dated 09.01.2015 passed by the Summoning Court is well reasoned and based on proper appreciation of evidence of the complainant and as such, no interference is required. The petition, being devoid of any merit, is hereby dismissed.

15.01.2016
gurpreet

(DAYA CHAUDHARY)
JUDGE