

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

**CRR No.2179 of 2014 (O&M)
Date of decision : 06.04.2016**

Jai Singh

.....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. S.S. Khurana, Advocate
for the petitioner.

Mr. Surender Singh, AAG, Haryana.

Mr. J.P. Jangu, Advocate
for respondents no.2 to 6.

ANITA CHAUDHRY, J(ORAL)

This revision is directed against the order dated 29.05.2014, passed by the Additional Sessions Judge, Rewari who dismissed the application filed under Section 319 Cr.P.C. filed by the complainant seeking to summon respondents no.2 to 6.

The facts necessary for disposal of the issues raised in the petition are necessary to be laid. Jai Singh lodged a complaint against his son-in-law. He had levelled allegations of dowry demand and torture. His daughter had jumped into the village pond. Sumitra died on 30.08.2013. The death was within 7 years of her marriage. The FIR was registered under Section 304-B and 498-A IPC. The complainant levelled allegations only against Dinesh. The police

investigated the matter and filed the challan against Gainda Ram, the brother-in-law as they found a suicide note. At the trial, the complainant levelled allegations against the husband and his relatives. An application was filed under Section 319 Cr.P.C., seeking to summon Dinesh, the husband, two brother-in-laws (Devar), father-in-law and mother-in-law. Allegations of cruelty and demand of dowry were levelled against all the members of the family. It was pleaded that they should have been challaned as the death was within 7 years of the marriage and they should be summoned and tried along with the accused who had been challaned.

The trial Court dismissed the application observing that though the allegations were only against the husband but during investigation, involvement of Gainda Ram was found and he was challaned. It had also noted that a suicide note written by the deceased was recovered by the police and as per the suicide note allegations were levelled against Gainda Ram, the brother-in-law who had raped the victim and that had shattered her and she was forced to commit suicide. It noted that the FSL report had been tendered on record wherein opinion had been given that the writing was that of the deceased and there was no reason to summon any other accused.

Aggrieved by the order, the complainant had approached this Court.

I have heard counsel for both the sides.

Counsel for the petitioner has urged that there was a mistake and another FIR number had been mentioned and it should be FIR No.203. The counsel has referred to Annexure P-1. The

counsel further submits that he was pressing the application only against the husband. It was urged that brother-in-law was challaned when the accusations made by the petitioner were against the husband and the deceased had come back to the parents house five days ago and had narrated about the harassment she was facing and it was in respect to demand of dowry. It was urged that after three days the suicide note was recovered at the instance of the accused and the allegations in the FIR have been reiterated by the complainant in his statement before the Court, therefore, the additional accused should be summoned to face trial.

The submission on the other hand was that though the FIR contained allegations against the husband but a suicide note was recovered and the police investigated the matter from that angle as well and had challaned the brother-in-law. It was urged that the petitioner had approached this Court with a petition under Section 482 Cr.P.C. for direction to the police to register the FIR against the husband and other relatives but that was dismissed and the Court had refused to order reinvestigation. It was urged that the suicide note was sent for comparison.

The State counsel states that the FSL report had been received and it had been reported that the handwriting was that of the deceased. It was urged that in the suicide note the deceased had absolved the husband or any of his family members and the witnesses have been examined who have not supported the prosecution. Translation of the suicide note was also placed on record.

In the complaint made to the police, the complainant had named the husband and had accused him of harassment and demand of dowry. A suicide note was recovered from the matrimonial home, which was handed over to the police on 2nd September, 2013. The police investigated that angle as well and arrested Gainda, the brother-in-law. The suicide note referred to his acts and several instances of ravishment and the agony and the humiliation she was facing. The police did not challan the husband or his family members. The petitioner approached this Court with a petition filed under Section 482 Cr.P.C. seeking directions to police to arrest the husband and his relatives and for re-investigation. The petition was disposed of on 24.02.2014. The concluding paragraph reads as under:-

“It is settled law that the Court cannot interfere in the investigation nor the Court can direct the Investigating Officer to investigate in any specific way or against a specific person. After the investigation, the challan has already been presented and the trial Court has already framed the charges. The Investigating officer has collected the evidence including the suicide note that Gainda Ram is the accused. The petitioner, if still has any grievance regarding the investigation, is at liberty to file criminal complaint or he can raise all these points before the trial Court and can avail the remedy available to him. It is also settled law that the Court cannot pass the order of re-investigation. It can only ask for further investigation.”

The trial had commenced and charge was framed against Gaimda Ram and the statement of the complainant had been recorded when an application under Section 319 Cr.P.C. was moved. The Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab (2014)2 SCR 1*** had examined the scope and extent of the powers of the Court to arraign any person as an accused during the course of inquiry or trial as contemplated under Section 319 Cr.P.C. Initially, a reference was made by two Judges Bench, which noticed the conflict between the judgment rendered in ***Rakesh Vs. State of Haryana 2001 AIR SC 2521*** and the decision in ***Mohd. Shafi v. Mohd. Rafiq & Anr., AIR 2007 SC 1899***. The reference was desired to be resolved by a three Judges Bench and ultimately a Constitution Bench was formed and it was observed as under:-

"A. Though under [Section 319\(4\)\(b\)](#) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under [Section 319](#) Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different."

In order to summon additional accused, it was observed that a person who is required to be summoned under Section 319 Cr.P.C., the degree of satisfaction that would be required had to be different and there has to be some material in the course of the trial against the person who is sought to be summoned. No material was produced by the complainant to show the involvement of the husband. There was no compelling circumstances to exercise the powers under Section 319 Cr.P.C. The trial Court had carefully examined the evidence and had rightly rejected the prayer and there are no reasons to differ with the view taken by it.

The petition is dismissed.

06.04.2016

sunil

(ANITA CHAUDHRY)
JUDGE