

In the High Court of Punjab and Haryana at Chandigarh

Crl. Revision No. 1079 of 2016 (O&M)

Date of Decision: 19.12.2016

Gurmeet Kaur

.....Petitioner

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. P.S.Ahluwalia, Advocate
for the petitioner.

Mr. Deep Singh, AAG, Punjab.

Mr. Sandeep Arora, Advocate
for the complainant.

ANITA CHAUDHRY, J(ORAL)

The petitioner has assailed the order dated 30.1.2016 vide which the Additional Sessions Judge, Jalandhar has summoned the petitioner who is the mother-in-law.

I have heard both the sides at great length.

The submissions on behalf of the petitioner are that challan was presented against the husband under Section 306 IPC and no other person was placed in column No. 2 and the case was committed and charge was framed on 29.9.2015 and thereafter the police filed a supplementary challan exonerating the two other persons named in the complaint and the trial Court without referring to the provisions summoned the additional accused. Counsel further urges that the provisions under Section 193 Cr.P.C. could not be invoked after the charge was framed as the Court had already taken

another 2013(3) R.C.R. (Criminal) 787, case the Apex Court has held that the cognizance is taken when charge is framed. The counsel further submits that the Court has not even mentioned the provisions under which it was summoning the additional accused. Reliance was placed upon '***Hardeep Singh versus State of Punjab and others 2014(1) R.C.R. (Criminal) 623***' and orders passed by this Court in '***Harish Chander Sharma versus State of Punjab CRR-233-2014***' and '***Sharanpal Juneja and another versus State of Punjab and another CRM-M-14809-2009***'.

The submissions on the other hand are that the challan was submitted only against Manjinder Singh and the Court could exercise the powers under Section 193 Cr.P.C. and there are ample powers with the Court to invoke the provisions under Section 193 Cr.P.C. when the complicity is found from the material which is available on record and that is before recording evidence.

I am unable to agree with the contentions raised on behalf of the respondent. The police had filed challan against the husband. No other name was shown in column No. 2 of the challan. While filing the challan there was a reference to the fact that the complainant side had given a representation. It was also noted that the police was enquiring into the fact and if any new fact came to light then they would be filing a supplementary challan. The case was committed and charge was framed and at that juncture, the supplementary challan was filed. The police submitted the report that Gurmeet Kaur and Sandeep Kaur had been found to be innocent.

No application was given by the State or by the complainant. The Court invoked the powers under Section 193 Cr.P.C. and summoned two other persons named by the witness in the statement recorded under

Section 161 Cr.P.C.

In *Dharampal's* case (supra) the Constitution Bench had held that once the case is committed to the Court of Sessions by the Magistrate the Court of Sessions assumes original jurisdiction and it can summon those persons whose names are shown in column No. 2 of the police report to stand trial along with those already named therein. This power can be exercised before taking cognizance. But in this case the Court had already taken cognizance and charge had been framed. The Sessions Court could not have summoned the additional accused after the cognizance had been taken. It could only proceed against additional persons against whom some material had been brought in and by invoking the provisions under Section 319 Cr.P.C.

The order passed by the trial Court dated 30.1.2016 is set aside. It is, however, made clear that the trial Court would be well within its competence to summon the additional accused under Section 319 Cr.P.C. if some evidence is produced in the Court from which it appears that there are some additional accused who are to be tried together with the accused already before the Court.

The petition is allowed.

(ANITA CHAUDHRY)
JUDGE

December 19, 2016
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No