

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

**Crl. Rev. No.1373 of 2016 (O&M)
Date of decision : 07.04.2016**

Madhu

.....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. L.M. Gulati, Advocate
for the petitioner.

ANITA CHAUDHRY, J.

This revision is directed against the order dated 09.03.2016, passed by the Additional Sessions Judge, Amritsar who dismissed the application filed under Section 319 Cr.P.C. The complainant was seeking summoning of additional accused.

FIR No.85 dated 20.05.2015 was registered at the instance of the petitioner. Pawan Malhotra was married to Puja @ Garima on 29.06.2011. A child was born out of the wedlock. After two months of the marriage Puja was detected with typhoid. The allegations were that she was turned out of the house. Instead of arranging treatment for her, she was sent back to parental home. After recovery she returned to the matrimonial home but the

beatings continued and she was sent back. Allegations of demand of dowry were also made. The complainant had alleged that in October, 2013, she was beaten and turned out of the matrimonial home and she stayed in the parental house for seven months and a complaint was lodged and with the intervention of the respectables, a compromise was effected and she was sent back to the in-laws house. The allegations are that on 07.05.2015 Puja came back to the parental house. Her condition was serious and on asking she disclosed that her husband, Jeth, Jethani, mother in law and sister in law had beaten her and had turned her out of the house. The parents got her admitted in the hospital where she remained for two days. Thereafter, she was admitted to another hospital. Puja died on 20.05.2015. The allegations were that she had died due to the injuries inflicted by the in-laws.

The police investigated the case and filed the challan only against the husband under Section 304-B IPC.

The trial had commenced and the statement of the complainant had been recorded when an application under Section 319 Cr.P.C. was moved. The complainant wanted to summon the other persons named by them in the FIR. The trial Court dismissed the application and had noted the following:-

"As is apparent from the postmortem examination report, no injury was found on the person of deceased. As per report given by doctor, possibility of death due to Viral Myocarditis cannot

be ruled out. From the report of Chemical Examiner, it transpires that no poison was detected in the Viscera. Further more, if statement of PW1 complainant Madhu is gone through, she has admitted that the deceased was earlier also suffering from typhoid fever and her treatment was going on. Her statement that deceased was given beatings before her death and before her admission in the hospital does not find corroboration from the medical evidence. Demand of alleged dowry made by accused is of scooter and motorcycle and the persons who are sought to be summoned as additional accused are brother in law (Jeth), sister in law (Jethani), mother in law and sister in law (Nanan) of deceased. In the considered opinion of this court, demand of scooter and motorcycle in the shape of dowry has nothing to do with these persons as they were not to use the same. There is no other allegation against the persons who are sought to be summoned as additional accused. Thus, in the considered opinion of this court, from the medical piece of evidence as referred above and from the oral evidence as relied upon by prosecution, there are no sufficient grounds to summon Kapil Malhotra, Manju, Uma Rani and Anita as additional accused. Considering all these facts and circumstances, application filed by the prosecution to summon Kapil Malhotra, Manju Uma Rani and Anita as additional accused being devoid of merits stands dismissed."

I have heard counsel for the petitioner at length and have gone through the record.

The counsel for the petitioner contends that the additional persons who were named by the complainant were also named in the FIR and the police did not challan them and their names were placed in column no.2 and the petitioner had again named those persons and they should have been summoned and the nature of satisfaction is the same that is required for framing charge. Reliance was placed upon ***Hardeep Singh Vs. State of Punjab and others 2014(3) SCC 92.***

Admittedly, the girl was suffering from typhoid. The allegations are that she was beaten up and turned out of the house on several occasions. There is no previous MLR. Perusal of the MLR dated 09.05.2015 shows that history given was that injuries were given when the girl was preparing food. The injuries noted in the MLR are as follows:-

- 1. C/O pain inside the mouth no mark of injury is seen over mucosal all teeth are intact oral hygiene is average slurring of speech is present no external mark over the cheeks present tenderness.*
- 2. C/O pain over whole of the abdomen. No mark of external injury seen. Tenderness present.*
- 3. C/O pain over the chest no mark of external injury seen. Tenderness present.*

At the time of admission, the Medical Officer had noted that the speech of the patient was slurred. As per PMR, the death was due to Viral Myocarditis. No poison was found in the Chemical Examiner's report. The injuries noted by the Medical Officer were

not the cause of the death. The patient died in the hospital. The girl had only complained of pain inside the mouth, abdomen and the chest. No redness or mark of injury was seen.

In *Hardeep Singh's* case (supra), the Hon'ble Apex Court had held that when additional accused have to be summoned then the degree of satisfaction for summoning of accused has to be different. 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.”

The trial Court considered the statement and the documents and had found that there was no material to justify the summoning of the additional accused and the statement was not sufficient for the Court to proceed against the additional accused. There is no reason to differ with the view taken by the Court below.

The revision is dismissed in limine.

07.04.2016

sunil

**(ANITA CHAUDHRY)
JUDGE**