

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

Crl. Revision No. 936 of 2015(O&M)

Date of Decision: 23.08.2016

Hari Om & Anr.

.. Petitioners

Vs.

State of Haryana & Anr.

.. Respondents

with

Crl. Revision No. 1214 of 2015(O&M)

Kalawati

.. Petitioner

Vs.

State of Haryana & Anr.

.. Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. N.S. Shekhawat, Advocate
for the petitioners.**

Mr. Sanjay K. Saini, AAG Haryana.

**Mr. Gopal Sharma, Advocate
for respondent No.2.**

ANITA CHAUDHRY, J.

By way of above-referred revision petitions, petitioners Hari Om, Krishna and Kalawati have questioned the legality and propriety of order dated 10.02.2015 passed by Judicial Magistrate Ist Class, Mahendergarh vide which they have been summoned to face trial as additional accused in FIR No. 201 dated 31.05.2011, under Section 498-A IPC, Police Station Mohindergarh.

Complainant Sangeeta was married to Sharwan on

31.01.2009 and a son was born to the couple. The petitioners are Sharwan's relatives. Petitioner Hari Om is the brother, petitioner Krishna is his wife while petitioner Kalawati is his mother.

Before recapitulating the facts of the case, let us first advert to different proceedings faced by the parties.

A dispute had arisen and a complaint was given by the wife to S.P. Narnaul on 15.03.2011, which was marked to Women Cell. Before the police could take a decision on the registration of the case, Sangeeta filed a complaint before the Judicial Magistrate on 27.03.2011 levelling allegations under Sections 323, 342, 406, 498-A, 506 and 120-B IPC against Sharwan and the present petitioners. During pendency of the complaint, the Women Cell recommended registration of the FIR against the husband only and FIR No. 201 dated 31.05.2011 was registered. The names of the petitioners were kept in column No.2 of the challan. The trial proceeded. In the meantime, in the complaint filed in the Court, the Magistrate on the basis of preliminary evidence adduced by the complainant, summoned Sharwan and Kalawati, the mother-in-law, vide order dated 08.06.2012 under Sections 406 and 498-A read with Section 120-B IPC. The complaint qua Hari Om and Krishna was dismissed. A revision was filed by Kalawati

against the order of the Magistrate, which was allowed by the Revisional Court on 16.10.2013 and the summoning order qua her was set aside for want to compliance of provisions of Section 202(1) and 210 Cr.P.C.

There is nothing on record to show that order passed by the Magistrate qua dismissal of complaint qua Hari Om and Krishna or the order passed by the Revisional Court allowing the revision of Kalawati was challenged by the complainant.

Meanwhile, the trial in the FIR case reached the stage of defence evidence when an application under Section 319 Cr.P.C. was filed by the complainant Sangeeta seeking summoning of Kalawati, Hari Om and Krishna as an additional accused. The application was allowed on 06.02.2015 and the accused were summoned. The petitioners have impugned the order dated 06.02.2015.

It is relevant to mention here that the complainant on 16.02.2015 made a statement that the accused in the FIR case and complaint were same, therefore, she wanted to withdraw the complaint case. Consequently, it was withdrawn.

Coming to the facts of the present case, Sangeeta had filed a complaint before the police after two years of the marriage and FIR No. 201 was registered. It was mentioned

in the complaint that her father had spent money more than his capacity and a sum of Rs.15 lacs were given in the marriage as dowry; Rs.1.5 lacs were given to Sharwan for purchasing dowry articles and Rs.3 lacs were given to Sharwan during customary rites. Apart from this, a gold chain, gold and silver rings were given to Sharwan, bracelet to mother-in-law Kalawati and other gold jewellery was given by the father for the complainant. On the very next day of the marriage, her husband, mother-in-law, jeth and jethani started harassing her for brining insufficient dowry. It was stated that the accused taunted her that a sum of Rs.25 lacs had been spent on the marriage while her father had given only Rs.15 lacs. The jewellery which was given to her by the father was snatched and she was not allowed to wear. On the asking of Krishna, her mother-in-law the husband started giving beatings to her. She kept on tolerating their excesses. On 04.11.2009 a son was born and this time also a sum of Rs.4 lacs were spent by her father. The accused were not happy with the dowry and they misbehaved with her and gave beatings to her. She was thrown out of the house and was permitted only when a sum of Rs.5 lacs was given by her father to Sharwan. But after some time the accused started demanding another sum of Rs.5 lacs. At one time, Sharwan took her on the

pretext of going to Salasar, but left her at the parental home. Allegations were made that the accused retained her all dowry articles.

After the registration of the FIR, it was investigated and as noticed above, challan was only filed against Sharwan while the petitioners were kept in column No.2 of the challan.

I have heard learned counsel for the parties and have gone through the paper book very carefully.

It has been urged by learned counsel for the petitioners that the petitioners have wrongly been summoned as no specific role had been attributed to them in the FIR. It was urged that it was for this reason that the police did not file challan against them. He has pointed out that the complainant did not challenge the order passed by the Revisional Court in respect of Kalawati and the order passed by the Magistrate dismissing the complaint qua Hari Om and Krishna had attained finality. Referring to ration card, Annexure P-8 it was pointed out that the couple had been residing separately and the petitioners could not be said to a beneficiary to the said demand of Rs.5 lacs. He had further relied upon complaint Annexure P-9 which was given to the police on the basis of which DDR No. 30 dated 28.02.2011 was registered wherein only the husband was

blamed. According to him, the complainant has made improvements during trial only to widen the net. It has been contended that provisions under Section 319 Cr.P.C. could not have been invoked.

On the other hand, learned State counsel did not dispute that the petitioners were found innocent during investigation.

Learned counsel for the complainant has supported the impugned order. It has been urged that the complainant has deposed specifically about their involvement and were rightly summoned to face trial.

In **Hardeep Singh Vs. State of Punjab & Ors. 2014(3) SCC 92**, Hon'ble Apex Court deliberated on the issue regarding the powers under Section 319 Cr.P.C. Dealing with the question regarding degree of satisfaction required for invoking the power under Section 319 Cr.P.C., numerous judgments were taken into account and it was observed:-

98. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary 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 unrebutted, 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 ***Krishnappa v. State of Karnataka, 2004 (4)***

RCR (Criminal) 678, the Court ruled that the power to summon an accused is an extraordinary power conferred on

the Court and it should be used very sparingly and only if compelling reasons exist for taking cognizance against the person other than the accused.

The Apex Court in ***Sarabjit Singh and another v. State of Punjab and another*** reported as 2009(3) RCR (Criminal) 388 observed as follows:-

"17. The provision of Section 319 of the Code, on a plain reading, provides that such an extraordinary case has been made out must appear to the court. Has the criterion laid down by this Court in Municipal Corporation of Delhi (supra) been satisfied is the question? Indisputably, before an additional accused can be summoned for standing trial, the nature of the evidence should be such which would make out grounds for exercise of extraordinary power. The materials brought before the court must also be such which would satisfy the court that it is one of those cases where its jurisdiction should be exercised sparingly. We may notice that in Y. Saraba Reddy v. Puthur Rami Reddy and Anr. [JT 2007 (6) SC 460], this Court opined:

"...Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section

319 contemplates that evidence of witnesses given in Court..."

Similar view has been reiterated in the cases of **Asha Rani Vs. State of Punjab 2014(7) RCR(Crl.) 238, Suman Ashok Kumar Vs. State of Punjab 2012(4) CCR 115, Dalpreet Singh & Ors. Vs. State of Punjab & Ors. 2012(6) RCR(Crl.) 2315 and Sukkhu Raidas & Ors. Vs. State of U.P. & Anr. 2011(6) RCR(Crl.) 2582.**

It is apparent that for the purpose of forming an opinion to summon an additional accused, the Court must be satisfied that there exists an extra ordinary case for exercise of jurisdiction. The case in hand needs to be analyzed in view of the law laid down referred to above.

A perusal of the allegations in the FIR itself shows that there is no specific allegation regarding demand of dowry or harassment in relation thereto by the present petitioners. There are general allegations in the FIR that the complainant was harassed by the accused or was given beatings by the husband on their instigation. On 28.02.2011 i.e. few days earlier to the making of complaint to the police, on the basis of which FIR was registered, the complainant had given another complaint, Annexure P-9 in which the allegation regarding demand of Rs.25 lacs was made primarily against the husband only and not against

any other family members. The names of the petitioners were introduced for the first time in the complaint given to the police on 15.03.2011, which appears to be on the advice of some legal brain. This complaint to the extent of the petitioners was also disbelieved by the police and challan was filed against the husband. A perusal of the complaint would reveal that the whole allegations revolve around demand of Rs.5 lacs, which were ultimately paid to the husband. Ration Card, Annexure P-8 dated 07.01.2010 reveal that the couple had been residing in a separate house. The petitioners cannot be said to be a beneficiary of the alleged payment of Rs.5 lacs. Not only this, the complaint filed in the Court was also dismissed to the extent of petitioners Hari Om and Krishna and in the operative part, the learned Magistrate held as under:-

"In such circumstances sufficient grounds are made out to issue process against the accused no.1 and 2 for the commission of offence under Sections 499, 406/120-B IPC, however, so far as the allegations against accused no.3 Hariom and accused no.4 Smt. Krishna are concerned there are only vague allegations that accused Hariom and Krishna had participated in the alleged act of cruelty. In such circumstances at this stage no sufficient grounds are made out against

accused Hariom and Krishna.”

These findings were never challenged by the complainant by filing a revision. The order passed by the Revisional Court setting aside the summoning order qua Kalawati was also not challenged by the complainant. The same set of witnesses were examined in the complaint and the FIR case. No new fact, apart from improvements in the statement of complainant and witnesses, was there to prima facie satisfy the sine qua non for summoning the petitioners as an additional accused. It appears that the complainant had levelled allegations against the present petitioners just to widen the net. It is a well settled proposition of law that an order under Section 319 Cr.P.C. should not be passed only because the first informant wishes to implicate some persons other than the accused. The Courts are required to apply the stringent tests, one of the tests is that the Court should come to the reasonable conclusion on the basis of evidence before it that the same is likely to lead to conviction. Though the Court in the impugned order mentioned this fact, but no finding in this regard has been returned by the trial Court while summoning the petitioners. Even the trial Court overlooked the fact that there is a general tendency to rope in all the family members of the

husband in such like cases and mere ipse dixit would not serve the purpose. On the basis of general allegations, the trial Court ought not to have exercised the powers under Section 319 Cr.P.C., which have to be exercised sparingly and only if compelling reasons exist.

In view of the above, present revision petitions are allowed and impugned order dated 10.02.2015 passed by learned Judicial Magistrate Ist Class, Mahendergarh summoning the petitioners as additional accused is set aside.

However, it is made clear that this Court has analyzed the material and evidence on record only in relation to the petitioners. The observations made are without prejudice to the case on merits qua the other accused.

August 23, 2016
Jiten

(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No