

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

**Crl. Revision No. 830 of 2016(O&M)
Date of Decision: 29.02.2016**

Binder Singh

.. Petitioner

Vs.

State of Punjab & Ors.

.. Respondents

1. Whether Reporters of local papers may be allowed to see the judgment? Yes/No
2. To be referred to the Reporters or not? Yes/No
3. Whether the judgment should be reported in the digest? Yes/No

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. Kulbir Singh Sekhon, Advocate
for the petitioner.**

ANITA CHAUDHRY, J.

The petitioner is aggrieved of order dated 08.02.2016 passed by the Special Judge, Sri Muktsar Sahib, vide which his application for summoning Jagdev Singh and Inderjit Kaur as additional accused, was dismissed.

The petitioner had got FIR No. 71 dated 14.05.2015 registered under Sections 302, 304-B, 406 and 498-A IPC at Police Station Lambi. The complainant's daughter Simarjit Kaur @ Babbu was married to Bhulwinder Singh about four and a half years ago. His daughter had conceived, but the child died at birth. After six months of the marriage, his son-in-law started maltreating his

daughter for dowry. It was alleged that on the instigation of Jagdev Singh and his wife Inderjit Kaur, Bhulwinder Singh harassed his daughter. On 15\4.05.2015 he received information about the death of his daughter. He claimed that his daughter had been murdered by Bhulwinder Singh, Jagdev Singh and Inderjit Kaur.

After investigation, the police filed the challan only against Bhulwinder Singh. Respondents No.2 and 3 were found innocent. Their names were kept in column No.2 of the challan.

Charge under Section 304-B IPC was framed and statement of the complainant was recorded. Thereafter an application under Section 319 Cr.P.C. was moved and the prosecution wanted the summoning of respondents No.2 and 3. The application was dismissed on 19.01.2016.

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

It has been urged by learned counsel for the petitioner that the trial Court had erred in dismissing the application and there were specific allegations against respondents No.2 and 3, who were instrumental in murdering his daughter.

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 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 ***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 hands 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 nothing specific regarding demand of dowry or harassment in relation thereto by respondents No.2 and 3. No date, month of year was mentioned. There are general allegations in the FIR that the deceased was harassed by the husband on the instigation of respondents No.2 and 3. They were found innocent by the investigating agency and for this reason, they were not challaned by the police. No new fact was there to prima facie satisfy the sine qua non for summoning respondents No.2 and 3 as an additional accused. It is a well settled 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. It appears that the complainant had levelled allegations against the present petitioners just to widen the net. 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 had rightly declined to exercise the powers under Section 319 Cr.P.C., which have to be exercised sparingly and only if compelling reasons exists for taking cognizance against the person other than the accused.

In view of the above, present revision petition is

dismissed in limine.

However, it is made clear that this Court has analyzed the material and evidence on record only in relation to respondents No.2 and 3. The observations made are without prejudice to the case on merits qua the other accused.

February 29, 2016
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(ANITA CHAUDHRY)
JUDGE