

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

CRM-M-15401 of 2017 (O&M)

Date of Decision: 17.08.2017

Deepti Chopra

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Krishan Sehajpal, Advocate
for the petitioner.

LISA GILL, J (Oral).

The petitioner is aggrieved of order dated 27.10.2016 as well as order dated 28.03.2017 passed by the learned Judicial Magistrate Ist Class, Gurugram and learned Additional Sessions Judge, Gurugram, respectively. An application under Section 319, Code of Criminal Procedure, 1973 (for short-'Cr.P.C') for summoning respondents no. 2 to 4 has been dismissed vide the impugned orders.

Brief facts are that FIR No. 38 dated 29.01.2014, under Sections 498-A, 323, 506, 34 IPC, Police Station Sector 40, Gurugram was registered at the behest of the petitioner against five accused persons. Two of the accused i.e. mother-in-law and husband of the complainant namely Tarun Chopra and Manju Chopra are facing trial. Respondent no.2 is the unmarried sister-in-law, respondent no.3 is the unmarried brother-in-law and respondent no.4 is the father-in-law of the petitioner.

Marriage between the petitioner and accused-Tarun Chopra was solemnized in July, 2009. As per the FIR, sufficient dowry as per the capacity of the petitioner's parents was given to the accused at the time of marriage. A sum of ₹ 16 lakhs was spent on the marriage. Demand of a car was raised by the accused. A son was born to the couple in May, 2016.

The petitioner's husband was transferred to Pune in December,

2010, but she joined him later. The petitioner's father-in-law went to U.S.A. The demand for a car by the in-laws did not cease. The petitioner's husband tried to obtain a loan but could not get it. The petitioner was pressurized to get money for the car. Petitioner's mother gave some money to the accused husband. Ultimately, a WagonR car was purchased in the petitioner's name by her husband on 04.08.2013. However, it is averred that the situation did not improve and ultimately petitioner was again physically abused by her in-laws on 02.11.2013. She called her parents and the police. Proceedings under Section 107, 151 Cr.P.C were initiated. The petitioner is stated to be living with her parents since then. Action against the accused was prayed for.

The accused-respondents no.2, 3 and 4 were found innocent during investigation. Challan was presented against two of the accused on 15.07.2014. The petitioner deposed before the learned trial Court on 29.08.2016. Thereafter, an application under Section 319 Cr.P.C was filed for summoning respondents no.2, 3 and 4 as additional accused.

The learned trial Court vide order dated 27.10.2016 (Annexure P-7), dismissed the said application. Revision petition filed by the petitioner was also dismissed by the learned Additional Sessions Judge, Gurugram vide a detailed order dated 28.03.2017 (Annexure P-9). Aggrieved therefrom, the present petition has been preferred.

It is contended that there are specific allegations in the FIR against respondents no.2, 3 and 4. Petitioner has specifically stated that on 20.07.2013, she was physically abused by her mother-in-law, sister-in-law and brother-in-law. Thereafter, it is pointed out that on 02.11.2013, respondents no.2 and 3 along with petitioner's mother-in-law and husband subjected her to physical and mental harassment. She received injuries on

her right arm. Her head hit against the wall and she received a number of injuries. Proceedings under Section 107, 151 Cr.P.C were initiated against the accused persons.

In this view of the matter, it is submitted that the learned Courts below have wrongly held that specific allegations have not been raised against respondents no.2, 3 and 4. The impugned orders are therefore, liable to be set aside and respondents no.2, 3 and 4 should be summoned as additional accused to face trial.

I have heard learned counsel for the petitioner and have carefully gone through the file as well as certain documents referred to at the time of arguments.

Learned counsel for the petitioner is unable to deny that in respect to respondent no.4 i.e. father-in-law of the petitioner, the sole allegation is that he did not intervene despite being privy to the fact of harassment and ill-treatment being meted out to the petitioner. Respondent no.4 i.e. father-in-law of the petitioner is admittedly not residing in India since 19.09.2012. The allegations against him is that he was instigating the other accused telephonically from U.S.A.

Respondent no.2, the unmarried sister-in-law was pursuing her L.L.B. from Delhi University(Indian Law Institute) and remained in Delhi from 2012 till 2015. The contention of learned counsel for the petitioner that she was residing at Gurugram, though, pursuing her studies at Delhi, is of no avail for the simple reason that the allegations in the FIR itself are not specific in any manner. In respect to both, respondents no.2 and 3 general and vague allegations have been levelled. There is nothing on record to show that the petitioner was ill-treated or harassed at their behest or by them.

Learned counsel for the petitioner has referred to an out patient health care

card dated 02.11.2013 of the petitioner, wherein it is noted that she complains of pain on her right shoulder. No external mark of injury has been noticed by the doctor. The said document by itself cannot be relied upon to hold that the petitioner was subjected to harassment/physical abuse at the hands of respondents no.2 and 3. It is specifically observed by learned Additional Sessions Judge that respondent no.3 was pursuing his L.L.B. from Bharat Vidhyapeeth University, Pune. He was pursuing his further studies from the same university. It was contended on behalf of the petitioner that the learned Revisional Court in its order dated 28.03.2017 has wrongly recorded that respondent no.3-Kunal Chopra is pursuing his further studies in Business Administration from Bharat Vidhyapeeth University, Pune. Petitioner was directed to file a specific affidavit in this respect. Pursuant thereto, affidavit dated 15.07.2017 has been filed by the petitioner, wherein it is stated as under:-

- “2. That Kunal Chopra respondent no.3 completed his schooling in April 2010 and got admission in BBA course in Pune and he completed his BBA in the month of June 2013 and in the month of August 2013 he went for training for two months in Phillippines and returned to India on 28.10.2013. The beatings were given to deponent by respondent no.2, 3, husband and mother in law on 20.07.2013 and at that time above said four were very much present at the matrimonial home of deponent.
3. That on 02.11.2013 when he was arrested U/s 107/151 Cr.P.C. he was very much present in Gurgaon in the matrimonial home of deponent. The deponent has no knowledge about his admission in MBA up to Nov 2013 as he resided in matrimonial home upto Nov 2013 and deponent has no knowledge about his study after Nov 2013.”

Therefore, in the facts and circumstances of the case, to say that the investigation conducted by the Investigating Agency, wherein the said respondents were found to be innocent, is tainted merely on the statement of the petitioner would not be justified, at this stage. Learned Additional

Sessions Judge, Gurugram has rightly upheld order dated 27.10.2016 passed by the learned trial Court. The summoning of a person as an additional accused to face trial cannot be permitted on the mere asking of the complainant.

The Hon'ble Supreme Court in **Hardeep Singh v. State of Punjab, 2014(1) RCR(CrL) 623** has held that for summoning an accused under Section 319 Cr.P.C , it is not necessary for the evidence led before the court to be necessarily tested on the anvil of cross-examination but it does require 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. Reference in this respect can be gainfully made to the judgment of the Hon'ble Supreme Court in **Brijendra Singh v. State of Rajasthan, 2017 SCC OnLine SC 491.**

Learned counsel for the petitioner is unable to point out any illegality or infirmity in the impugned orders dated 27.10.2016 and 28.03.2017 passed by the learned Judicial Magistrate Ist Class, Gurugram and learned Additional Sessions Judge, Gurugram, respectively, which calls for interference by this Court in exercise of jurisdiction under Section 482 Cr.P.C.

Accordingly, this petition is dismissed.

[LISA GILL]
Judge

17.08.2017
s.khan

Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No