

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

**CRM-M-24952-2017**

**Date of decision :16.08.2017**

Kavita

..... Petitioner

Versus

State of Haryana and others

..... Respondents

**CORAM : HON'BLE MR.JUSTICE H.S. MADAAN**

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Present : Mr. Abhimanyu Singh, Advocate  
for the petitioner.

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**H.S. MADAAN, J.**

This petition under Section 482 Cr.P.C. has been filed by complainant-Kavita seeking quashing of impugned order dated 16.04.2016 passed by the Court of Judicial Magistrate Ist Class, Bhiwani as well as impugned order dated 26.04.2017 passed by learned Additional Sessions Judge, Bhiwani whereby both the Courts have, dismissed application under Section 319 Cr.P.C.

The petitioner prays that petition be accepted and application under Section 319 Cr.P.C. for summoning of private respondents No.2 to 4 be allowed.

Briefly stated the facts of the case are that complainant-Kavita had got recorded FIR No.5 dated 03.09.2015 for offences under Sections 323, 498-A, 506 of the Indian Penal Code ("IPC" - for short) with Police Station Women, Bhiwani. Her husband Sunil was sent up to face trial, during the course of trial, statement of complainant was recorded where she named Ravinder Kumar Chauhan, Krishna Devi, Sushil Kumar as her tormentors along with her husband Sunil Kumar already facing trial. An application under Section 319 Cr.P.C. was filed by the prosecution to summon such persons named by complainant in her statement an additional accused to face trial along with accused Sunil Kumar, but that application was dismissed by the Court of Judicial Magistrate Ist Class, Bhiwani vide order dated 16.04.2016. The complainant Kavita preferred a revision petition against that order but the same was dismissed by learned Additional Sessions Judge, Bhiwani vide judgment dated 26.04.2017. Feeling aggrieved by the said order, present petition has been filed.

Notice of the petition was given to the respondents.

I have heard learned counsel for the parties, besides, going through the record and I find that there is no merit in the petition. The orders passed by both the Courts below are well reasoned one based upon proper appraisal of evidence and correct interpretation of law. There is no illegality or infirmity therein much less visible on the face of such orders. The trial Magistrate has relied upon the law laid down by the Apex Court in judgment **Hardeep Singh vs. State of Punjab 2014(1) RCR (Criminal)**

623, reproducing relevant part of the observation as follows:-

*“98-. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary 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."*

*It has been further held as under:-*

*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 persons 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."*

While examining case in hand in the light of ratio of the authority in **Hardeep Singh's** case (supra), learned Magistrate has observed that there was nothing on record except self-suffering statement of the complainant before the Court and there was no other evidence on record to show that there was prima facie against the persons sought to be summoned who are parents-in-law and brother-in-law (*Dever*) of the complainant. Learned Magistrate has noted that police had already investigated the case thoroughly but did not find sufficient evidence against persons now sought to be summoned by way of moving application under Section 319 Cr.P.C.. Therefore, they were not challaned and evidence on file was not sufficient to

exercise power under Section 319 Cr.P.C. It has been noted that the allegations raised by the complainant in the initial complaint to the police had been repeated in the depositions while appearing as PW-2, therefore, nothing new came on record. It has further been noted that the complainant appearing as PW-2 in her statement has admitted in her cross-examination that her husband was living in Bangalore at the time of marriage and at the time when she came to her parental house. She has further conceded that her father-in-law has been doing job in Delhi and living in the said city only. She had shown her ignorance whether her brother-in-law was doing a job in foreign country i.e. Qatar. It has further been noted that PW-2 has admitted that her mother-in-law has been living in Delhi. The learned Magistrate has found that the complainant was residing with her husband at Bangalore, whereas her parents-in-law had been residing at Delhi and her brother-in-law (*Dever*) was working in a foreign country. Therefore, the allegations against them seems to be exaggerated to put pressure upon family of husband in matrimonial disputes. It was for those reasons that application was dismissed.

The Court of Sessions hearing revision petition has recorded finding that merely because some witnesses have mentioned the name of such persons or that there is some material against that person, the discretion under Section 319 Cr.P.C. would be invoked by the Court and the word “*it appears*” in Section 319 Cr.P.C. are not to be read lightly. While saying so the Court of Session in its order has placed reliance upon judgment **Rajindera Singh vs. State of UP (SC) 2007(3) R.C.R. (Criminal) 1021; Kailash vs. State of Rajasthan 2009(1) SCC (Criminal) 1006**. Learned Court has taken into view the ratio of the authority **Lal Suraj @ Suraj**

**Singh vs. Jharkhand, 2009(1) R.C.R. (Criminal) 504 (SC)** that *a person cannot be summoned to face trial on the basis of strong suspicion and Court should satisfy that there is possibility of his conviction.* It has been observed that *Section 319 Cr.P.C. is a special provision and it seeks to meet an extraordinary situation. Although, it confers a power of wide amplitude, but is required to be exercised very sparingly.*

Reference to further authority on that point **Paramvir @ Happy vs. State of Haryana, 2009(1) RCR (Criminal) 408** and **Brindaban Dass vs. State of West Bengal 2009(1) RCR (Criminal) 672 (SC)** have been made. A reference to judgment by this Court cited as **Hukan Chand vs. State of Haryana, 2007(3) RCR (Criminal) 141** to the effect that *where the accused is found innocent by the police and complainant during examination in the Court only reiterates his allegations made in the complaint, this cannot be considered as an additional evidence and Court cannot summon the accused on the basis of statement alone which had already been considered by the Police.* Learned Court of Sessions in its order has observed that name of proposed accused were mentioned in the statement of complainant on the basis of which FIR was recorded but prima facie no specific role has been assigned to the accused proposed to be summoned as additional accused. Rather the allegations so leveled against the parents and brother of husband of the complainant are general, bald, indefinite and vague in nature; that there is no specific allegation against them for the cruelty met out to the complainant for and in connection with the demand of additional dowry.

Reference to one more authority has been given as **Kans Raj vs. State of Punjab and others, AIR 2000 (SC) 2324** wherein it has been

observed that *lately, a tendency has developed for roping in all the relations in dowry cases in order to browbeat and pressurize the immediate family of the husband.* A reference to citation **Sushil Kumar Sharma vs. Union of India and others, 2005 (3) RCR (Criminal) 745** has been made where issue of striking down Section 498-A IPC has been sprouted and it was observed as under:-

“xxxxx

*In such cases, "action" and not the "section" may be vulnerable. If it is so, the court by upholding the provision of law, may still set aside the action; order or decision and grant appropriate relief of the person aggrieved.*

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*The object of the provision is prevention of the dowry menace. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bona fide and have filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignominy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till*

*then the Courts have to take care of the situation within the existing frame work. As noted the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not assassins' weapon. If cry of "wolf" is made too often as a prank assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any strait jacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre- conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumption that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumption are drawn which again are reputable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that in innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally indisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has*

*to be kept in view.”*

Learned Court of Sessions has also taken note of authority by the Apex Court **M/s Pepsi foods Ltd. vs. Special Judicial magistrate, 1997(4) RCR (Criminal) 761 (SC)** wherein it was observed as under:-

*“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused.*

*xxxxxx”*

Thus it is not a fit case to exercise jurisdiction under Section 482 Cr.P.C. and upset the orders passed by the Courts below, which do not appear to be suffering from any illegality or infirmity.

The petition is dismissed accordingly.

**16.08.2017**

*Gaurav Sorot*

**( H.S. MADAAN )  
JUDGE**

1. Whether reportable? **No / Yes**
2. Whether speaking / reasoned? **No / Yes**