

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

Date of decision: 21.03.2017

1. CRM-M No.33528 of 2015 (O&M)

Poonam

....Petitioner

Versus

Rashmi and another

....Respondents

2. CRM-M No.33542 of 2015

Poonam

....Petitioner

Versus

Vijay and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. S.K. Panwar, Advocate
for the petitioner (in both the petitions)

REKHA MITTAL J.

CRM No.9608 of 2017 in CRM-M No.33528 of 2015

Heard.

Allowed as prayed for.

Annexure P5 is taken on record subject to just exceptions.

Disposed of accordingly.

CRM-M Nos.33528 and 33542 of 2015

This order will dispose of CRM-M No.33528 of 2015 and CRM-M No.33542 of 2015 as these have emerged out of the same order passed by the Courts below and involve identical questions of law and fact for adjudication. For brevity, facts are taken from CRM-M

No.33528 of 2015.

A brief backdrop of the case is that the petitioner lodged FIR No.90 dated 28.04.2012 registered under Sections 498-A, 406, 506 and 323 of the Indian Penal Code (in short 'IPC') at Police Station Chandhat, Palwal against her husband and his family members. On completion of investigation, challan was presented against Pradeep (husband), Deepak – elder brother of Pradeep and Ant Ram father of Pradeep. Bimla Devi, mother-in-law, Rashmi wife of Deepak and Vijay maternal uncle of Pradeep were found innocent during investigation. Charge was framed against Pradeep and others and during trial, Poonam the complainant was examined and application under Section 319 of the Code of Criminal Procedure (in short 'Cr.P.C.') was filed for summoning Bimla Devi, Rashmi and Vijay as additional accused.

After having heard the Public Prosecutor, counsel for the complainant as well as counsel for the accused already facing trial, the application was decided by the trial Court vide order dated 16.03.2015 whereby Bimla Devi and Vijay were ordered to be summoned whereas application for summoning Mrs. Rashmi was dismissed. The order passed by the trial Court led to filing of two revision petitions i.e. one by the petitioner/complainant and the other by Vijay and Bimla Devi and both the petitions were decided by the Revisional Court by a common order dated 17.09.2015. The revision petition preferred by the complainant was ordered to be dismissed whereas the petition filed by Vijay and another was allowed and, eventually, the application filed by the prosecution for summoning of additional accused came to be dismissed. Now, the complainant is before this Court to express her

grievance with regard to non-summoning of all the three persons as additional accused.

Counsel for the petitioner has submitted that the trial Court in para 6 of the order dated 16.03.2015 has taken a reasonable and practical view that it is not necessary that the in-laws should be staying in the matrimonial house to cause harassment to the complainant. Their influence upon the husband of complainant from distance is also instrumental for harassment of the victim. It is further submitted that the complainant in her first version as well as in her statement recorded before the Court has reiterated the allegations with regard to demand of dowry by all the accused and harassment in connection thereof at the behest of the accused, therefore, Bimla Devi and others are liable to face criminal proceedings along with the accused already before the trial Court. It is prayed that the order passed by the trial Court may be restored but with modification that Rashmi is also summoned to face trial along with Bimla Devi and Vijay.

I have heard counsel for the petitioner, perused the paperbook particularly the report submitted under Section 173(2) Cr.P.C., statement of the complainant recorded by the trial Court and the orders impugned.

The trial Court while giving benefit of doubt to Smt. Rashmi has held that on perusing testimony of the complainant, the Court is satisfied that there is sufficient evidence of prima facie nature to summon two respondents as additional accused under Sections 498-A, 506 and 323 IPC. The order passed by the trial Court summoning additional accused was set-aside by the Revisional Court in view of its

observations recorded in para 11 of the order dated 17.09.2015. A relevant extract from the findings of the Revisional Court is as follows:-

“Here are the facts where complainant has not certified in her complaint or in her evidence as PW4, by which particular act and at which particular time in specific and in what particular manner did the summoned accused demanded dowry or ill-treated her or gave her threatenings or gave beatings. Again to repeat, the allegations of dated 25.02.2012 are limited to the role played by her husband Pradeep only. Accused are at distant relation with the complainant and complainant herself shifted away from the matrimonial house on 13.01.2013. With these averments and the evidence coming on record file I find it difficult to believe that there is sufficient evidence on record to call upon additional accused Bimla Devi and Vijay to face trial along with remaining accused Rashmi as there is no sufficient evidence which can lead ultimately to judgment of conviction if so recorded against these proposed accused.”

Undoubtedly, the Revisional Court has committed an error by holding that evidence on record should be sufficient to record conviction of the proposed accused. Nevertheless, counsel for the petitioner has not disputed that the petitioner and her husband had been staying separately in a separate house since 13.01.2013. It is also not denied that the complainant in her testimony as PW4 has not attributed any particular act committed at a particular time and in a particular manner by the accused sought to be summoned as additional accused. However, the petitioner has levelled specific allegation with regard to an occurrence dated 25.02.2012, when she was admittedly residing with

her husband in a separate house. As per the allegations, she was beaten up by her husband but when she complained against the husband to her mother-in-law and thereafter visited her in-laws house, the mother-in-law and sister-in-law (Rashmi) removed her gold chain and ear rings. On one hand, the complainant wanted to express her grievance qua conduct of the husband to her mother-in-law but on the contrary she is accusing the mother-in-law for causing harassment and cruelty in connection with demand of dowry. It is difficult to reconcile the two situations put forward by the complainant.

The trial Court ordered summoning of Bimla Devi and Vijay by holding that there is sufficient evidence of *prima facie* nature to summon them. The satisfaction recorded by the trial Court to this extent does not stand the test of judicial scrutiny in the light of enunciation laid down by Constitution Bench of Hon'ble the Supreme Court in ***“Hardeep Singh vs State of Punjab”*** with connected cases, **2014(1) RCR (Criminal) 623** wherein the Court while answering question No.iv *“Whether the power under Section 319(1) Cr.P.C. can be exercised only if the Court is satisfied that the accused summoned will in all likelihood be convicted?”*, has held, quoted 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.”

Counsel for the petitioner has failed to point out any such materials on record sufficient to satisfy the test that has to be applied for summoning of additional accused namely more than *prima facie* case as exercised at the time of framing of charge. I would hasten to add that Hon'ble the Supreme Court of India in **“Preeti Gupta and another vs State of Jharkhand and another”**, 2010(4) RCR (Criminal) 45 has held that *“It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious concern.”* Further held *“The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases.”*

When the facts and circumstances of the present case are examined in the light of judgment in **Hardeep Singh's case (supra)** and the observations made in **Preeti Gupta and another's case (surpa)**, I do

not think it to be a fit case wherein intervention in exercise of jurisdiction under Section 482 Cr.P.C. is warranted.

For the foregoing reasons, the petitions are dismissed. However, nothing stated hereinbefore shall cause prejudice to either of the parties qua the trial against the accused already before the Court.

(REKHA MITTAL)
JUDGE

21.03.2017
yakub

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No