

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR No. 1598 of 2016

Date of decision : May 30, 2017

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Tahir Hussain

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Sunil Panwar, Advocate for the petitioner.

Ms. Mahima Yashpal, AAG, Haryana.

Mr. D.S Matya, Advocate for respondents no. 2 to 4.

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RITU BAHRI, J.

The present revision petition has been filed against the order dated 6.2.2016 passed by the Additional Sessions Judge, Mewat whereby an application filed by the petitioner under Section 319 Cr.P.C for summoning respondents no. 2 to 4 as additional accused has been dismissed.

As per the statement made by the complainant-Tahir Hussain in the FIR, marriage of his two daughters Mehnaz and Shehnaz was solemnized on 8.5.2011 with Bilal and Shahid sons of Mohammed Ali. As per the complainant, in the marriage, he gave dowry beyond his capacity. But, after the marriage of his daughters, their in-laws were not happy with the dowry articles brought by the them and they started demanding one

Bolero Vehicle. On account of demand of dowry, his daughter Mehnaz was beaten several times and was also shunted out of the house. As Mehnaz got pregnant, attempts were made by her parents to rehabilitate her in her matrimonial home. For few days, her in laws behaved properly, but, thereafter, again they started to torture and harass her for want of dowry. She was even shunted out of her matrimonial home. In this regard, a panchayat was held in the village on 11.6.2014 and she was sent with the accused. On 17.7.2014, the accused tried to kill Mehnaz by giving her electric shocks. On 23.7.2014, at about 4'O' clock in the morning, they came to know that the accused have killed his daughter Mehnaz and the dead body of the daughter is lying at the house of the accused. In this background, the FIR was got registered.

After investigation, the challan was presented against the husband of the deceased. An application under Section 319 Cr.P.C (Annexure P-2) was filed by the applicant-complainant Tahir Hussain for summoning Liyakat, Usman and Shahid (respondents no. 2 to 4) as additional accused. Reply (Annexure P-3) to the aforesaid application has also been filed by respondents no. 2 to 4. Application has been dismissed by observing that during the investigation, the above said three persons were found to be innocent and as per the investigation there was no evidence to suggest that the Investigating Officer had colluded with the accused namely Liyakat, Usman and Shahid due to which he declared them as innocent in his investigation. Verification of the investigation was made by the Deputy Superintendent of Police and on this ground, the application under Section 319 Cr.P.C was dismissed.

Counsel for the petitioner has argued that as per the deposition

of Shehnaz (Annexure P-1), who is the real sister of deceased Mehnaz, electric shocks were given to her sister on 17.7.2014 by her in laws when she was not present at the house and had gone to the fields. Thereafter on 22.7.2014 at about 5:00 am, her husband Sahid came from Delhi to Village. At about 12:00 am in the night, she heard a noise of commotion. She came out from the room and from the window of the room from which noise was coming, she saw that her mother-in-law Ali Mohamdi caught hold hair of Mehnaj, father in-law Mohd. Ali and Billal were pulling the chunni which was in the neck of Mehnaz. Her husband Shahid, Liyakat and Usman grappled Mehnaj and they all were trying to kill Mehnaj. Counsel for the petitioner has argued that specific roles have been attributed to all these three accused and hence there was sufficient evidence to summon them under Section 319 Cr.P.C.

At this stage, counsel for the State has informed the Court that after presentation of the challan, a lie detector test was carried out and as per the call details, liyakat and usman were not present in the village. And due to this reason, they were kept in column no.2. As per the call details from 22.7.2014 to 24.7.2014, they were in Alwar, Rajasthan. They have also undergone the lie detector test. Shahid was also not in the village on the date of the occurrence as per the call details and as per the lie detector test.

A perusal of the FSL report with respect to the lie detector test and challan show that all these accused have been kept in column no.2 rightly. Merely oral deposition of Shehnaz PW-3 would not be sufficient to summon the respondents as additional accused to face a trial in criminal proceedings. The impugned order has been rightly passed as per the guidelines issued by the Supreme Court in the case of **Hardeep Singh vs.**

State of Punjab and others 2014 (1) RCR (Criminal) 623, wherein it has been held that there should be more than a prima facie evidence to form the opinion to summon the accused under Section 319 Cr.P.C. The power under Section 319 Cr.P.C is discretionary as well as extra ordinary which has to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It has not to be exercised merely because that some other person may also be guilty of committing that offence. It is only where the strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised.

In the present case, respondents no. 2 to 4 were kept in column no. 2 and they were not found in the village on that. Even as per the report of the polygraphic test dated 4.8.2015, there is no ground to interfere in the impugned order.

In view of all that has been discussed above, present revision petition is dismissed.

May 30, 2017

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(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No