

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

CRR No.3064 of 2015 (O&M)

Date of decision: 06.02.2017

Palwinder Kaur and others

....Petitioners

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Gagandeep Singh Sirphikhi, Advocate
for the petitioners.

Mr. Mikhail Kad, AAG, Punjab.

None for respondent No.2.

REKHA MITTAL J. (Oral)

The present petition directs challenge against order dated 09.03.2015 passed by the Sub-Divisional Judicial Magistrate, Batala whereby the petitioners, married sisters-in-law (Nanads) of the complainant have been summoned as additional accused.

Counsel for the petitioners would submit that notice of motion was issued only *qua* petitioners No.1 and 3 as petitioner No.2 has since passed-away after filing of the petition. It is further submitted that petitioner No.1 was married in the year 1988 whereas petitioner No.3 was married in 1990 and both the petitioners are leading a happy married life with their husbands in their matrimonial homes. It is further submitted that marriage of the complainant with brother of the petitioners was performed in April, 2006. It is argued that order passed by the trial Court is bereft of any reasoning much less examining the issue in the light of authoritative enunciation of law laid down by a

Constitutional Bench of Hon'ble the Supreme Court ***“Hardeep Singh vs State of Punjab and others”***, 2014(3) SCC 92.

Counsel for the State is not in a position to justify the impugned order.

There is no representation on behalf of respondent No.2/complainant who was earlier being represented by a counsel.

I have heard counsel for the parties, perused the paperbook particularly the order impugned.

Before adverting to the submissions made by counsel for the petitioners, it is appropriate to take note of relevant extract from the order impugned, quoted thus:-

“4. The present case has been registered on the complaint which is Ex.PA on the file. She has leveled specific allegations against accused Sukhwinder Kaur, Jasbir Kaur and Palwinder Kaur and while appeared in the court also she has leveled specific allegations on these accused. Prima-facie offence under Section 406 and 498-A IPC is clearly made out against these persons. So they are ordered to be summoned as additional accused and application is disposed of accordingly. The offence being non-bailable, they be summoned by way of non-bailable warrants of arrest for 17.04.2015.”

The learned trial Court failed to advert to the judgment in ***Hardeep Singh's case (supra)*** wherein the Court formulated 05 questions and one of the questions answered by Hon'ble the Apex Court is as to what is the standard of satisfaction to be recorded by the Court for summoning a person as an additional accused under Section 319 Cr.P.C. The said standard has to be certainly more than that of a *prima*

facie case and less than the evidence resulting in conviction of the accused. When the findings recorded by the trial Court are examined in the light of answer to question No.4 in the aforesaid judgment, order impugned cannot be allowed to sustain and liable to be set-aside.

For the aforesaid reasons, the petition is allowed, the impugned order is set-aside and the matter is remitted to the trial Court for decision of the application under Section 319 Cr.P.C. afresh, in accordance with law. The petitioners shall not be entitled to an opportunity of being heard at the stage of deciding application under Section 319 Cr.P.C.

(REKHA MITTAL)
JUDGE

06.02.2017

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No