

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

Crl. Revision No.1921 of 2016(O&M)

Date of Decision: September 28, 2017

Rupinder Kaur @ Raj Kaur

...Petitioner

Versus

State of Punjab & another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. M.S. Basra, Advocate
for the petitioner.

Mr. Abhaypal Singh Gill, AAG Punjab.

Mr. Vipin Mahajan, Advocate
for respondent No.2.

JAISHREE THAKUR, J. (Oral)

The instant criminal revision has been filed against the impugned order dated 21.04.2016 passed by the learned Addl. Sessions Judge, Gurdaspur, vide which the learned trial court has taken cognizance under Section 193 Cr.P.C., and summoned the present petitioner to face trial under Section 304-B/34 of Indian Penal Code.

2. In brief, the facts of the case are that an FIR came to be registered at the instance of Jaspreet Singh s/o Kuldeep Singh that a marriage was performed of his sister Jagroop Kaur with Harpreet Singh @ Happy s/o Gurdeep Singh, resident of Village Nangal, Police Station Tibber. At the time of marriage, sufficient *istridhan* was given as per their

financial capacity. From this wedlock, a minor son was born. Thereafter, the sister of the complainant was pressurized by her husband Harpreet Singh and Rupinder Kaur @ Raj Kaur, mother-in-law to bring cash to the tune of Rs.3 lacs in the month of January, 2014 and thereafter, an amount of Rs.2.50 lacs was given to Harpreet Singh. Despite having given the amount, Jagroop Kaur was maltreated and harassed by her in-laws. On 21.09.2015, Jagroop Kaur informed the complainant that she was being harassed and maltreated by Harpreet Singh and Rupinder Kaur to bring cash from her parents. On 22.09.2015 at about 12.45 a.m. Harpreet Singh made a call from the mobile phone of Jagroop Kaur that Jagroop Kaur is ill whereupon, the complainant advised that she should be taken to the hospital. The complainant reached the house of Harpreet Singh the next morning whereupon, both Harpreet Singh and Rupinder Kaur fled away from the spot, leaving behind dead body of Jagroop Kaur. It was stated that Jagroop Kaur had been killed by strangulation. In the report filed under Section 173 Cr.P.C., the name of Rupinder Kaur @ Raj Kaur was kept in column No.2. The matter was committed before the Addl. Sessions Judge, Gurdaspur for trial, where an application was made under Section 193 Cr.P.C. for taking cognizance against Rupinder Kaur @ Raj Kaur by the State through APP, on account of the fact that there had been specific allegations against Rupinder Kaur @ Raj Kaur in the statement suffered by the complainant. The learned Addl. Sessions Judge, Gurdaspur, allowed the said application and summoned the petitioner to face trial under Section 304-B, 34 of Indian Penal Code. Aggrieved against the said order, the instant criminal revision has been filed.

3. Counsel for the petitioner argues that the marriage of the deceased with her son took place on 27.06.2008 and the present occurrence has taken place on 29.09.2015, thus, the ingredients of death being caused within a period of 07 years is missing and the offence under Section 304-B of Indian Penal Code is not made out. It is also argued that the petitioner was not present at the spot, when the alleged offence took place, as would be established from the enquiry report conducted by the SSP, Gurdaspur. In the enquiry, it had come out that the petitioner was not present at her house and she had gone to Village Jaura Chittran to attend a kirtan program, while also noting that deceased Jagroop Kaur used to remain tense, on account of death of her first husband. On an earlier occasions too, she has consumed poisonous substance and her husband Harpreet Singh and petitioner herein had taken her to Mahajan Hospital, Amritsar and saved her life. It is also argued that no new evidence has been brought on to the record after the presentation of the challan to establish the role of the petitioner in the alleged offence.

4. Per contra, counsel appearing on behalf of the respondent-State has raised an argument that merely the petitioner-accused has been shown in column No.2 and a report has been submitted by the police under Section 173 Cr.P.C., it cannot be said that the application under Section 193 Cr.P.C. has wrongly been allowed. Once a matter has been committed by the Magistrate, under this Code the court has ample power to look into the allegations and summon a person, who has been put in column No.2, if the court is not satisfied with the investigation or the reasons given in the final report.

5. I have heard counsel for the parties, apart from perusing the record.

6. Section 193 Cr.P.C. reads as under;-

“193.Cognizance of offences by Courts of Session. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.”

7. Admittedly, Code of Criminal Procedure does not contain any bar for the court of Sessions to take cognizance of any offence after the case has been committed to it by a Magistrate. In the instant case, the APP moved an application stating that the complainant has specifically named the petitioner as an accused in his statement and has attributed a specific role to her. The learned Addl. Sessions Judge, Gurdaspur, while relying upon pronouncement in ***Dharam Pal and others vs. State of Haryana and another, 2013(3) RCR (Criminal) 787 (SC)***, held that the court is empowered under Section 193 Cr.P.C. to summon a person, as specific allegations of harassment and maltreatment had been made regarding demand of cash to the tune of Rs.3 lacs and immediately thereafter the said demand, there was a death. The Sessions Judge is not to wait till the stage indicated in Section 319 Cr.P.C. and is empowered to summon an accused on the basis of record transmitted to it. In the instant case, on perusal of the specific statement recorded of the complainant and the contents of the FIR, the learned Addl. Sessions Judge, in his wisdom thought it proper to summon the petitioner as an accused.

8. Before this court, one of the argument put forth by counsel for

the petitioner is that since no new evidence has been brought on to the record after the presentation of the challan to establish the role of the petitioner in the alleged offence, the Sessions Court has no power to take cognizance of an offence against the person, who has been found innocent by the police and kept in column No.2.

9. Under the Code of Criminal Procedure, Section 190 empowers a Magistrate to exercise powers of taking cognizance till he frames charges against one or more accused persons. Similarly in Session trial cases, a Sessions Judge in the exercise of powers under Section 193 Cr.P.C. can take cognizance of offence against a person against whom there is sufficient material prior to framing of charges. In ***Kishun Singh and others vs. State of Bihar, 1993 Criminal Law Journal, 1700***, it has been held that in cases which are exclusively triable by the Court of Sessions, the Magistrate was not competent to take cognizance, but it was only Sessions Court which could take cognizance under Section 193 of the Code of Criminal Procedure, after the case is committed to it by the Magistrate. It was further held in the said case that the Court can certainly take cognizance against the offender under Section 319 Cr.P.C., if any evidence is produced during the course of trial, yet this power under Section 319 Cr.P.C. did not preclude the Sessions Court to summon a person in exercise of its power under Section 193 of the Code, if there is evidence to show involvement of the persons, not committed, in commission of offence against whom the cognizance is sought to be taken.

10. In ***Dharampal and others Vs. State of Haryana and another 2013 (3) RCR (Criminal) 787***, while relying upon the judgment in ***Kishun***

Singh's case (supra), it was laid down that in session trial cases, after the case stands committed for trial, the Sessions Court could issue summons under Section 193 Cr.P.C on the basis of the record transmitted to him. It was held that the Sessions Judge is not required to wait till the stage indicated in Section 319 Cr.P.C., and if satisfied on the basis of the material in report under Section 173 (2) Cr.P.C., it would be within the jurisdiction of the Sessions Court to issue summons to the additional accused.

11. It is held that the stage of exercising powers under Section 193 Cr.P.C under **Dharmpal's** case (supra) is before framing of charges and recording of evidence. After charges are framed and the trial Court in Session trial opts to record evidence, in such eventuality, the additional accused can be summoned only in exercise of powers under Section 319 Cr.P.C.

12. In the case in hand, the application for summoning the petitioner as an accused has been moved by the APP under Section 193 Cr.P.C., before framing of charges or commencement of trial. In view of the above ratio of law, this court is of the view that there is no infirmity impugned order so passed.

13. So far as argument raised by counsel for the petitioner that ingredients of Section 304-B/34 of Indian Penal Code are missing, as the occurrence in question took place after seven years of marriage, has no footing, since charges have already been framed in this case on 31.05.2016 under Section 304-B read with Section 34 of Indian Penal Code or in the alternative under Section 302 read with Section 34 of Indian Penal Code. As the trial court has framed the charges alternatively, the petitioner can

very well set up her defence during the course of trial in the way she wants.
As such, this court this argument of counsel for the petitioner is hereby rejected.

14. In view of the above discussion, the revision petition in hand is hereby dismissed, being devoid of any merits.

September 28, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes