

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

Crl. Revision No. 1954 of 2016(O&M)

Date of Decision: 05.07.2017

Piara Ram

.. Petitioner

Vs.

State of Punjab & Anr.

.. Respondents

with

Crl. Revision No. 2116 of 2016(O&M)

Sukha Ram & Anr.

.. Petitioners

Vs.

State of Punjab & Anr.

.. Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Present:- Mr. P.S. Ahluwalia, Advocate
for the petitioners.**

Mr. K.S. Aulakh, AAG Punjab.

**Mr. R.S. Randhawa, Advocate
for respondent No.2.**

ANITA CHAUDHRY, J.

The petitioners are aggrieved of order dated 02.03.2016 passed by the Additional Sessions Judge, Patiala vide which they have been summoned to face trial as additional accused in FIR No. 66 dated 22.07.2015, registered under Section 304-B IPC at Police Station Ghagga.

The facts leading to the institution of present criminal revision petition are being noticed first. On 22.07.2015 Premo @ Karamjit Kaur had died under mysterious circumstances. On coming to know about her death, his father Arjan Ram suffered a statement to the police wherein it was alleged that her marriage was solemnized with Soni Ram somewhere in

2012. Sufficient dowry was given in the marriage but husband Soni Ram, father-in-law Fauja Ram, mother-in-law Kartaro Devi, elder brother-in-law Sukha Ram, his wife Bholi Devi and brother of father-in-law Pyaru Ram started harassing her for bringing less dowry. At one point his daughter was sent to her parental home and with the intervention of Panchayat she was sent back to her in-laws house. He suspected that his daughter had consumed some poisonous substance on account of harassment meted out upon her by the aforesaid persons.

The case was investigated. The investigating agency found Sukha Ram, Bholi Devi and Pyaru Ram (the present petitioners) innocent and filed report Annexure P-2 dated 12.09.2015, which was approved by the SSP Patiala on 01.10.2015. Challan against the husband Soni Ram, father-in-law Fauja Ram and Kartaro Devi, the mother-in-law was filed. It has come on record that their trial culminated into their conviction.

It is apt to mention here that at the trial Arjan Ram, the complainant had appeared and his examination-in-chief was recorded. Thereafter, an application under Section 319 Cr.P.C. seeking summoning of Sukha Ram, Bholi Devi and Pyaru Ram as additional accused was filed. The same was allowed by virtue of the impugned order dated 02.03.2016. Dissatisfied with the same, petitioner Piara Ram has preferred CRR No. 1954 of 2016, whereas CRR No. 2116 of 2016 has been filed by petitioners Sukha Ram and his wife Bholi Devi.

Since a common order has been challenged in both the petitions, I propose to dispose of both the petitions by this order passed in CRR No. 1954 of 2016.

I have heard learned counsel for the parties and have perused

the paper-book carefully.

The counsel contends that they had wrongly summoned and no specific role had been attributed to them in the FIR. It was urged that it was for this reason that the police did not file challan against against them. It was contended that the complainant, Arjan Ram Kaur made improvements at the trial because they were the relatives of the husband. It has been contended that provisions under Section 319 Cr.P.C. have wrongly been invoked. Reliance has been placed on **Hardeep Singh Vs. State of Punjab & Ors. 2014(3) SCC 92.**

On the other hand, learned State counsel does not dispute that the petitioners were found innocent during investigation.

Learned counsel for the complainant supported the impugned order. It has been urged that the complainant has deposed specifically about their involvement and were rightly summoned to face trial.

In **Hardeep Singh Vs. State of Punjab & Ors. 2014(3) SCC 92**, Hon'ble Apex Court deliberated the issue of exercise of powers under Section 319 Cr.P.C. While dealing with the question as to the degree of satisfaction required for invoking the power under Section 319 Cr.P.C., plethora of judgments were taken into account and observed as under:-

98. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary 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 unrebutted, 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.”

In ***Krishnappa v. State of Karnataka, 2004 (4) RCR (Criminal) 678***, the Court ruled that the power to summon an accused is an extraordinary power conferred on the Court and it should be used very sparingly and only if compelling reasons exist for taking cognizance against the person other than the accused.

The Apex Court in ***Sarabjit Singh and another v. State of Punjab and another reported as 2009(3) RCR (Criminal) 388*** observed as follows:-

“17. The provision of Section 319 of the Code, on a plain reading, provides that such an extraordinary case has been made out must appear to the court. Has the criterion laid down by this Court in Municipal Corporation of Delhi (supra) been satisfied is the question? Indisputably, before an additional accused can be summoned for standing trial, the nature of the evidence

should be such which would make out grounds for exercise of extraordinary power. The materials brought before the court must also be such which would satisfy the court that it is one of those cases where its jurisdiction should be exercised sparingly. We may notice that in *Y. Saraba Reddy v. Puthur Rami Reddy and Anr.* [JT 2007 (6) SC 460], this Court opined:

"...Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates that evidence of witnesses given in Court..."

Similar view has been reiterated in the cases of **Asha Rani Vs. State of Punjab 2014(7) RCR(CrL.) 238**, **Suman Ashok Kumar Vs. State of Punjab 2012(4) CCR 115**, **Dalpreet Singh & Ors. Vs. State of Punjab & Ors. 2012(6) RCR(CrL.) 2315** and **Sukkh Ravidas & Ors. Vs. State of U.P. & Anr. 2011(6) RCR(CrL.) 2582**.

It is apparent that for the purpose of forming an opinion to summon a person as an additional accused, the Court must be satisfied that there exists an extra ordinary case for exercise of power. The case in hands needs to be analyzed in view of the law laid down, referred to above.

A perusal of the allegations in the FIR itself shows that there is nothing specific regarding demand of dowry or harassment in relation thereto by the present petitioners. There are general allegations in the FIR that the accused, including the present petitioners were not satisfied with the dowry given in the marriage and were harassing the deceased and he suspected that his daughter committed suicide due to harassment meted out on her by her in-laws and the present petitioners. It is necessary to mention

here that no poisonous substance was detected and the cause of death was opined as asphyxia as a result of choking. There is no specific instance regarding harassment given by the present petitioners. Even the demand is not specific in the FIR and for the first time in Court complainant Arjan Ram disclosed that a demand of Rs.50,000/- and a motor cycle was raised by the accused. A perusal of report submitted by the police shows that petitioner Pyara Singh, brother of father-in-law had separated over 30 years ago while petitioners Sukha and his wife who were married much earlier to the deceased were living separately for the last 10/11 years. The deceased was living with her husband and parents-in-law who have since been convicted. It does not appeal to prudence that the petitioners who were living separately were beneficiary to the alleged demand of Rs.50,000/- and the motor cycle. The complainant had made improvement by mentioning that his daughter was harassed on account of non-fulfillment of demand of Rs.50,000/- and a motor cycle and in the Panchayat, Sukha Ram slapped his daughter. The role attributed by him was that Bholi Devi caught hold his daughter from her hair, which fact is conspicuously missing in the FIR. No MLR or complaint relating to that incident had been placed on record. Learned counsel for the petitioners had also pointed out that in a bid of implicate the petitioners, a story was cooked relating to the incident before the Panchayat by way of supplementary statement which was recorded on 14.09.2015 only when the complainant came to know that untraced report had been prepared on 12.09.2015. Leaving that aside, apart from general allegation, no overt act has been attributed to petitioner Pyara Ram. It is a well settled proposition of law that an order under Section 319 Cr.P.C. should not be passed only because the first informant wishes to implicate

some persons other than the accused. The Courts are required to apply the stringent tests one of the tests is that the Court should come to the reasonable conclusion on the basis of evidence before it that the same is likely to lead to conviction. No finding in this regard has been returned by the trial Court while summoning the petitioners. Even the trial Court overlooked the fact that there is a general tendency to rope in all the family members of the husband in such like cases and mere ipse dixit would not serve the purpose. On the basis of general allegations, the trial Court ought not to have exercised the powers under Section 319 Cr.P.C., which have to be exercised sparingly and only if compelling reasons exists for taking cognizance against the person other than the accused.

In view of the above, both the petitions are allowed and impugned order dated 02.03.2016 passed by learned Addl. Sessions Judge, Patiala, summoning the petitioners as additional accused is set aside.

July 05, 2017
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(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No