

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

CRM-M-8317-2017 (O&M)

Date of decision: 22.12.2017

Sonia Suhag

...Petitioner

Versus

State of Haryana & another

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. N. S. Shekhawat, Advocate
for the petitioner.

Mr. P. P. Chahar, DAG, Haryana.

Mr. Manish Soni, Advocate
for respondent No. 2.

JAISHREE THAKUR, J.

1. This instant petition has been filed under Section 482 Cr.P.C. for quashing of the order dated 01.03.2017 passed by the Additional Sessions Judge and order dated 06.02.2017 passed by the JMIC Gurugram , whereby an application under Section 319 Cr.P.C., in case FIR No. 256 dated 30.07.2009 registered under Sections 498A, 406, 323 and 506 of the IPC, has been dismissed.

2. In order to understand the checkered history of the case and the revision petition arising hereunder, a few facts need to be noticed. A marriage was solemnized between the petitioner and Parmod Kumar on 03.07.2002. A matrimonial dispute arose between the parties which started the onset of this bitter litigation. The matter was compromised between the parties and the petitioner herein went back to her matrimonial home on the assurance given that she would be treated with due love and respect.

However on 01.01.2008, a scuffle took place between the parties which led to the lodging of an FIR No. 7 under Sections 323 and 506 of the IPC on 03.01.2008 against the complainant and her father. Since the dispute could not be resolved amicably, FIR No.256 dated 30.07.2009 was registered on the basis of complaint made by petitioner-complainant against her husband Parmod, her parents-in-law, her brother-in-law Manoj, and other family members namely Devender, Ruchi and Vinod with allegations of demand of dowry, harassment, cruelty etc. Manoj, Devender, Ruchi and Vinod were found innocent during investigation and only the husband and parents-in-law of the petitioner were summoned to face trial. The petitioner herein stepped into the witness box as PW-3 and reiterated the allegations as set out in the FIR while also submitting that respondent No. 2 Manoj had made an attempt to attack her. This statement was recorded on 01.08.2014 and, thereafter, an application under Section 319 Cr.P.C. was filed for summoning Manoj and others, not chargesheeted as accused, which application was dismissed by the JMJC by an order dated 24.09.2014, subsequently confirmed by order dated 25.05.2016 passed by the Additional Sessions Judge, Gurugram. The dismissal of the application under Section 319 Cr.P.C. and the orders passed there under were challenged by the petitioner in **CRM-M-35582-2015** before this High Court in **Sonia Suhag vs. State of Haryana**. The High Court relying upon a judgment rendered in **Hardeep Singh vs. State of Punjab** dismissed the revision petition by order dated 05.02.2016. Thereafter, the petitioner once again moved an application on 23.01.2017 under Section 319 Cr.P.C. seeking to summon Manoj as an accused in the said proceedings. In the application, it was stated that the complainant while stepping into the witness box had

specifically attributed respondent No. 2 (person sought to be summoned) with causing injuries and assaulting the complainant in an incident which occurred on 26.12.2007. It was further averred in the application, that a complaint was filed by her father to In-Charge, Police Station Civil Lines, Gurugram (Annexure P-4). Factum of injuries on the person of the complainant has been proved by PW-21 Dr. Mukesh Khattar who had treated the petitioner on 26.12.2007 and had also stated that the petitioner had suffered perforation in the right ear. Other allegations of cruelty attributed to respondent No. 2 were also set out and, in this background, prayer was made for summoning of respondent No. 2. The application filed under section 319 Cr.P.C was dismissed by the JMIC by an order dated 06.02.2017 and the Additional Sessions Judge, Gurugram dismissed the revision filed by the petitioner on the ground that there was concealment of facts as it had not been brought to the notice of the Court that an earlier application filed under Section 319 Cr.P.C. seeking to summon respondent No. 2 has already been dismissed. It is also noticed by both the Courts below that no additional evidence had been brought on to the record to warrant summoning of the respondent to face trial. Aggrieved against the dismissal of the application, the instant petition has been filed.

3. Mr. N.S. Shekhawat, learned counsel for the petitioner, argues that from the very first instance there have been specific allegations against respondent No. 2 Manoj that he had subjected the complainant-petitioner to cruelty, had physically abused her by slapping her on the face which resulted in perforation of the ear drum and, therefore, he should have been summoned as an accused under Section 319 Cr.P.C. It is also argued that evidence has been led of Dr. Mukesh Khattar PW-21 and medical

prescription Exhibit PW 21/A which would prove the averments made. It is submitted that the Courts below have not decided the application on merits and have dismissed it on the grounds of concealment of facts. It is argued that the order passed by the Courts below dismissing the application under Section 319 Cr.P.C. is part of the current proceedings available on the record of the file and, therefore, there is no concealment.

4. *Per contra*, Mr. Manish Soni, learned counsel for respondent No. 2, submits that the application *per se* is not maintainable primarily on the grounds of concealment since the petitioner herein had not disclosed the factum of dismissal of a similar application seeking to summon respondent No. 2 as an accused. It is also argued that the matter stands thoroughly investigated and nothing new or substantial has been brought on to the record during trial for this Court to invoke its extraordinary powers under Section 319 Cr.P.C. to summon respondent No. 2 as an accused. It is also argued that the complaint (Annexure P-4) that has been relied upon, in which it had been stated that Manoj had slapped the complainant is not exhibited before the Courts and is only marked, therefore, there is no basis for any subsequent evidence. It is also argued that the petitioner herein has herself been convicted in the FIR No. 7 dated 03.01.2008 to undergo simple imprisonment for a period of one year and the divorce petition filed by the husband of on account of cruelty has been upheld up till the Supreme Court.

5. I have heard learned counsel for the parties and have perused the record of the case.

6. The petitioner herein seeks to summon respondent No. 2, a person who was found innocent during investigation, as an additional accused under Section 319 Cr.P.C. This High Court has already upheld

orders of the Courts below dismissing a previous application filed by the petitioner under Section 319 Cr.P.C. in **CRM-M-35582-2015** by holding as under:

‘‘As per judgment of Hon'ble the Apex Court in Hardeep Singh and another vs State of Punjab and others 2014(1) RCR (Criminal) 623, the degree of satisfaction for summoning a person under Section 319 Cr.P.C would be the same as for framing of charge but satisfaction of the Court is to be relevant in case, the trial Court is of the opinion that some other persons were also involved in the commission of the offence. Not only prima facie case is to be established from the evidence led before the Court but that material, which has come in the form of statement, is sufficient for framing of charge. In view of the facts, there is no merit in the contentions raised by learned counsel for the petitioner and the petition, being devoid of any merit, is hereby dismissed. ‘‘

7. This Court is seized of the question as to whether the Courts below have rightly dismissed the second application filed under section 319 Cr.P.C. as well as to answer the question whether the petitioner has been able to make out a case for summoning of respondent No. 2 ?

8. Section 319 Cr.P.C. is reproduced herein below:

319. Power to proceed against other persons appearing to be guilty of offence.

(1)Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2)Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3)Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4)Where the Court proceeds against any person under sub-section (1), then-

(a)the proceedings in respect of such person shall be commenced afresh, and the witnesses re- heard;

(b)subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

9. Admittedly an FIR No. 256 dated 30.7.2009 was registered on the basis of a complaint made by the petitioner against her husband, her parents in law, her brother-in-law Manoj, Devender, Ruchi and Vinod. In the said FIR allegations had been made against all the accused however, on the basis of the investigation only husband Parmod, and the parents-in-law were summoned to face trial. The complainant petitioner stepped into the witness box and recorded a statement giving details about the cruelty and the threats which she and her father were subjected to at the hands of the accused, while stating that respondent No. 2 had beaten her up and tried to remove her clothes. After the statement was recorded an application under section 319 Cr.P.C. was filed seeking to summon all those persons who had been put in column No. 2 in the challan presented, which application was dismissed by both the JMIC and the revisional Court, and affirmed in the High Court in **CRM-M-35582-2015**. Now another application dated 23.01.2017 has been preferred seeking to summon only Sh. Manoj, respondent No. 2 herein, as accused to face trial.

10. For exercising extraordinary powers under Section 319 Cr.P.C., this Court has to be satisfied as to whether there are sufficient grounds made out in the 2nd application to summon the respondent as an additional accused. Power under Section 319 Cr.P.C is an extraordinary power, which is to be used sparingly, only if, there are compelling reasons. The law regarding power to summon an accused under section 319 Cr.P.C is well-settled in a catena of judgments reported as **Sarojben Ashwinkumar Shah**

Etc Vs State Of Gujarat and Others, 2011 (3) R.C.R. (Criminal) 852, Hassle and Another Versus State Of Haryana, 2011 (2) R.C.R. (Criminal) 429, Ram Singh and Others Versus Ram Niwas and Another, 2009 (3) R.C.R. (Criminal) 501 and Hardeep Singh and Another Versus State Of Punjab and Others, 2014 (1) R.C.R. (Criminal) 623 amongst several others. On a conjoint reading of the judgments referred to above, the principle that can be culled out is, that Courts should not summon a person to face trial under Section 319 Cr.P.C only on the basis of a casual statement made by a witness. The power to summon an accused under Sections 319 Cr.P.C. must be used sparingly and only if compelling reasons exist. Moreover, the Court is to arrive at a satisfaction that evidence produced on behalf of the prosecution, if unrebutted, would lead to conviction of the person sought to be added as accused in the case. The Supreme Court in its recent judgment rendered in *Brijendera Singh and others versus state of Rajasthan Singh, (2017) 7 SCC 706* has further held that power can be invoked by the trial Court at any stage during trial that is before conclusion of a trial, once trial Court finds that there is some evidence against such a person on the basis of which evidence it can be gathered that he appears to be guilty of such an offence. The term 'evidence' is to mean as only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.

11. In the present case, at the very outset, a question that will have to be addressed is whether there has been concealment of fact, which would

not entitle the petitioner to any relief. Admittedly, an application under Section 319 Cr.P.C. seeking to summon respondent No. 2 was dismissed by the JMIC which order was confirmed by the High Court. Another application was filed under section 319 Cr.P.C after the dismissal of the 1st application without making any mention of the previous application filed. Both the Courts below held that there is concealment of fact, which has been challenged by the counsel for the petitioner who argues that the said application was part of the same proceedings and would not constitute any concealment. He relies upon a judgment rendered in ***Criminal Contempt No. 9 Of 2009, Court on Its Own Motion Versus Omit Kumar Jan And Another, 2009 (3) R.C.R. (Criminal) 331*** in support of the argument that in case there is no details of the earlier application it would not amount to fraud or concealment. This argument is not sustainable as the judgment relied upon is distinguishable on facts. In the judgment referred to above, an application had been preferred under section 311 Cr.P.C. to adduce additional evidence. The 1st application preferred was to place on record additional documents and while submitting the 2nd application the applicant sought permission for recalling a defence witness. The Division Bench held that *if in the later application, the details of the earlier applications are not mentioned, it would not amount to fraud because the cause of action and the reliefs sought are entirely different*'. In the case in hand, an application has been moved to summon respondent No. 2 Manoj as an additional accused without making any mention that a previous application already stood dismissed. The ground for summoning respondent No. 2 was on the grounds of cruelty, which is a similar ground in the instant application. In

such a situation, the petitioner was duty bound to disclose the dismissal of the earlier application since it is expected of the parties to come to Court with clean hands. Therefore this Court has no hesitation in holding that there is concealment of facts and there is no infirmity in the decision taken by the Courts below.

12. Even otherwise, on merits, this Court is of the view that the petitioner herein is not entitled to any relief sought. The petitioner is seeking to place reliance upon testimony of Dr. Mukesh Khattar, PW-21, and medical prescription Exhibit PW-21/A, evidence gathered during trial. The testimony of Dr. Mukesh Khattar was recorded on 24.10.2014, prior to the date of decision in **CRM-M-35582-2015** decided on 05.02.2016. It is true that additional evidence and an accused can be summoned at any stage of the case, but it is equally true that there should be no misuse of these provisions. The testimony of Dr. Mukesh Khattar recorded on 24.10.2014 was well within the knowledge of the petitioner, who, at that juncture, had the opportunity of placing the evidence on the record and seeking an order under Section 319 Cr.P.C. The petitioner slept over the matter and cannot be permitted to rake up this issue afresh after a lapse of 3 years.

13. Another argument has been raised by the counsel for the respondent that there is no averment in the FIR regarding respondent No. 2 having actively caused hurt to the complainant and only general allegations have been raised therein regarding harassment and demand of dowry and now the petitioner is seeking to improve upon her case. This argument is sustainable. On investigation, the police did not find any merit in the allegations against respondent No. 2. Counsel for the petitioner seeks to place reliance upon document (with this petition) Annexure P-4 dated

26.12.2007 which is a complaint filed with the Police Station Civil Lines, Sector 15, Gurugram regarding an occurrence dated 26.12.2007, alleging that respondent No. 2 had given a slap on the petitioner's ear. Admittedly this complaint as on date has not been exhibited and, therefore, no reliance can be placed upon the said document.

14. This Court is of the opinion that there has been concealment of fact which would dis-entitle the petitioner herein to any relief, and on merits there is no new evidence brought on the record after the dismissal of the 1st application filed seeking to summon respondent No. 2 as an additional accused to allow the application . Therefore in view of the above discussion, this Court finds no ground to interfere in the well reasoned orders passed by the Courts below.

15. Before parting with this judgment, it is noticed that by Administrative orders dated 08.08.2016 and 22.10.2016, the Courts were directed to decide the case within two months. While dismissing the revision petition, it is again directed that the proceedings be concluded within two months on receipt of certified copy of the order.

16. Revision petition stands dismissed.

22.12.2017

Waseem Ansari

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No