

In the High Court of Punjab and Haryana at Chandigarh

CRR-3971 of 2016

Date of Decision: July 27th, 2017

Virender

---Petitioner

vs.

State of Haryana and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Jagjeet Beniwal, Advocate
for the petitioner

Mr. Amrik Narwal, DAG, Haryana

Mr. P.S.Sullar, Advocate
for respondent Nos. 2 to 4

Rekha Mittal, J.

The present petition directs challenge against order dated 5.10.2016 passed by the Additional Sessions Judge (Exclusive Court), Bhiwani, dismissing application under Section 319 of the Code of Criminal Procedure (in short Cr.P.C.”) for summoning additional accused namely Ram Chander son of Bhag Chand, Ankit son of Ram Chander and Jyoti wife of Ankit.

A brief backdrop of the case is that marriage of Asha, sister of

complainant Virender (petitioner herein) was performed with Anil son of Ram Chander in August 2014. Out of the wedlock, a son was born in October 2015. Asha (victim) committed suicide in April 2016. Virender, brother of Asha lodged criminal proceedings on the basis of statement Ex. PW3/A. On completion of investigation, challan under Section 173 Cr.P.C. was submitted against Anil and his mother Ms. Laxmi. Anil and another were charged for committing offence punishable under Section 304-B of the Indian Penal Code (in short "IPC"). During the course of trial, Virender was examined as PW3 and thereafter the instant application was filed for summoning Ram Chander and others that came to be dismissed by the trial court vide order impugned.

Counsel for the petitioner has assailed the impugned order primarily on the ground that names of Ram Chander, Ankit and Jyoti wife of Ankit find specific reference in the first version given by the complainant, duly reiterated in his statement on oath recorded during trial. Further submitted that the petitioner has attributed specific allegations against the proposed accused, therefore, order impugned is liable to be set aside and Ram Chander and others may be summoned to face trial with Anil and another, already before the Court.

Counsel representing the private respondents has supported the impugned order with the submissions that the trial court, on a detailed consideration, of the facts on record, in the light of provisions of Section 319 Cr.P.C. and various judgments of Hon'ble the Supreme Court of India and this Court referred to in paras 8 and 9 of the impugned order has rightly arrived at a conclusion that there is no fresh material on record justifying

summoning of additional accused and statement of petitioner/complainant wherein he has made various improvements pointed out by the trial court is not sufficient to satisfy the test for summoning the additional accused as has been laid down by Hon'ble the Supreme Court of India in ***Hardeep Singh vs. State of Punjab and others 2014(1)RCR (Criminal) 623.***

I have heard counsel for the parties, perused the paper book particularly the impugned order and ratio laid down by the Constitution Bench in ***Hardeep Singh's case (supra).***

Before advertng to the submissions made by counsel for the parties, it is appropriate to extract the observations recorded by Hon'ble the Supreme Court of India in ***Hardeep Singh's case (supra)*** while answering question No. IV “What is the degree of satisfaction required for invoking the power under Section 319 Cr.P.C.?”, in para Nos. 98 and 99, quoted thus:-

“98. Power under [Section 319](#) Cr.P.C. is a discretionary and an extra- ordinary 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.”

Indisputably, there is nothing on record to suggest that Asha or for that reason her parental family members ever made any complaint against Anil or his family members either with regard to demand of dowry or consequential harassment/cruelty in connection thereof. After Asha passed away while she was lying admitted in a hospital at Rohtak, Virender made statement Ex. PW3/A before the police on the basis whereof FIR No. 114 dated 14.4.2016 under Sections 498-A, 304-B read with Section 34 IPC was registered at Police Station Sadar Dadri. In his first version, Virender had indicted all the members of in-laws family of Asha namely Anil (husband), Laxmi (mother-in-law), Ram Chander (Father-in-law, Ankit (Brother-in-law) and Jyoti (sister-in-law). After due investigation, challan was presented against Anil and Laxmi while others were kept in column No. 2 having been found innocent. Virender appeared in the witness box and

reiterated his version given before the police while making some additions as noticed by the trial court in the order impugned. The prosecution sought to summon the additional accused only on the basis of statement of Virender which was the subject matter of investigation meaning thereby that there was no additional material brought on record to form basis for summoning of additional accused.

Perusal of statement of Virender recorded during trial would reveal that he has not levelled any specific allegations against the respondents with regard to demand of dowry or harassment to the deceased in connection thereof.

Asha died in April 2016. To prove allegations that Asha was harassed on account of demand of dowry 'soon before her death', a relevant extract from testimony of Virender, reads as follows:-

“On 19.1.2016, I alongwith my maternal uncle and my uncles etc. went to the house of the accused with CHUCHAK (articles given after the birth of a child to a daughter of the family). We spent about Rs. 3/4 lakhs at the time of Chuchak ceremony. When I was to leave the house of the accused at that time, father-in-law of my sister took me at side and told to me that we were insulted at the time of marriage and the same thing was also repeated at the chuchak ceremony also and he said that he is big officer in police department. Ankit followed me and father-in-law of my sister and asked father-in-law that they are penniless and what they can give to us, so returned. I told them that we had spent in the chuchak according to our financial status and I requested them they should not harass my sister further more. Thereafter, I returned to my house.

In February 2016, I again went to the house of my sister and at that time also, she complained to me and told to me that they are harassing and beating to her. My sister also disclosed to me that either she should transfer two and half killas, which were in the name of my sister, be transferred in the name of Anil accused or they will kill her. My sister also told to me that they were saying kill me and I apprehend that they may kill me. I made my sister to understand and told her that people cannot be murdered in this manner, I returned to my house.”

A careful reading of the aforesaid extract does not satisfy the ingredients either with regard to any demand of dowry or harassment to the deceased in connection thereof by the additional accused.

To be fair to the petitioner, the petitioner has also deposed about demand made by Ram Chander and others, after the birth of son of Asha in October 2015. He has deposed in the following terms:-

“My sister gave birth to a male child in October 2015. On that occasion, parents-in-law, husband, Devar Ankit and Devrani Jyoti said that they were insulted at the time of marriage in not giving dowry according to their expectations now they should complete that demands. Mother-in-law told that valuable clothes and some ornaments be given to her. Devrani Jyoti said that valuable clothes be given to her. Father-in-law, Anil and Ankit raised a demand of golden Karas and a big car. I received a telephonic message with a request to come to her. At that time, I was not present in my house. At that time, my sister had made conversation with my mother. My sister disclosed to my mother about the above mentioned demands of accused to my mother. My

mother told my sister that they will give in the Chuchak as per our financial status. My sister told to her in-laws about the reply offered by my mother at that time. In-laws of my sister became angry and told to my sister that they were insulted at the time of marriage and the same is likely to be there at the time of chuchak ceremony. Accused again started harassing and giving beatings to my sister.

Perusal of the aforesaid makes it clear that conversation with regard to alleged demand by in-laws family members of the deceased was made between the deceased and her mother. Statement of the petitioner, in this regard, is mere hearsay. Mother of the deceased has been cited as a witness but not examined by the time, application under Section 319 Cr.P.C. was decided. This apart, any such demand made in connection with birth of the child does not fall within the definition of dowry under Section 2 of the Dowry Prohibition Act, 1961.

The petitioner has also deposed about the telephonic conversation dated 14.4.2016 between the deceased and her mother, in regard to beatings given to Asha by all the five persons against whom accusations were raised in the FIR. Again, statement of the petitioner with regard to any such conversation between Asha and her mother is hearsay evidence. As has been noticed hereinbefore, mother of the deceased has not been examined. Allegations with regard to Asha being given beatings by all the five family members of her in-laws on 14.4.2016 do not find corroboration from the post mortem report as no injury was found on person of the deceased. In view of the above, testimony of the petitioner is not at all sufficient to satisfy the test of more than a prima facie case for

summoning the additional accused. That being so, when the facts and circumstances of the present case are examined in the light of ratio laid down by Hon'ble the Supreme Court of India in *Hardeep Singh's case (supra)*, order passed by the trial court rejecting plea for summoning additional accused does not call for intervention in exercise of revisional jurisdiction.

In view of what has been discussed hereinbefore, the petition fails and is accordingly dismissed, leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

July 27th, 2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No