

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

CRR No. 4070 of 2016

Date of Decision : November 30, 2017

Surender and othersPetitioners

Versus

State of Haryana and another..... Respondents

CORAM : HON'BLE MRS. JUSTICE LISA GILL

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Present: Mr. Ashwani Gaur, Advocate
for the petitioners.

Mr. Sanjay K. Saini, AAG, Haryana.

Mr. Naveen Singh Panwar, Advocate
for respondent No.2.

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LISA GILL, J. (Oral)

The petitioners are aggrieved of order dated 23.09.2016 passed by the Sub Divisional Judicial Magistrate, Kharkhoda, Sonapat whereby they have been summoned to face trial as additional accused on an application under Section 319 Cr.P.C.

Petitioner No.1 is the paternal uncle (Taya) of the complainant's husband). Petitioner No.2 is a cousin brother of the complainant's husband i.e. son of another paternal uncle (Taya) and petitioner No.3 is the husband of the paternal aunt (Fufad) of the complainant's husband.

Brief facts necessary for the adjudication of the case are that FIR No. 133 dated 26.04.2012 under Section 498A/34 IPC was registered at Police Station Kharkhoda on a written complaint submitted by the complainant-respondent No.2. The complainant stated that she was married to one Virender on 13.12.2006. A child was born out of this wedlock. It is

stated that the complainant's in-laws are greedy persons. They started harassing and beating her for want of dowry. It is further stated that she lived at her parental house for 3-1/2 years. She filed a petition under Section 9 of the Hindu Marriage Act, 1955. During pendency of the case, verification in respect to her husband was sought for a job. Her in-laws induced her to compromise the matter so that necessary verification in respect to her husband could be carried out in a satisfactory manner. On an assurance given by her husband and her in-laws, the complainant returned to her matrimonial home on 23.01.2012. It is submitted that the complainant thereafter conceived and became pregnant. It is alleged that her parents-in-law and other family members on coming to know about the pregnancy brought some medicines and started pressurizing her to take the same for aborting the foetus. The complainant refused to take the medicines and was beaten due to her refusal. It is further alleged that the complainant's parents-in-law as well as the petitioners used to instigate her husband against her. Due to their instigation her husband used to beat and harass her. It is further stated by the complainant that all the persons named by her tried to kill her on 14.03.2012. She was physically abused but somehow managed to escape. Action was prayed for.

The present petitioners on investigation were found innocent. An application under Section 319 Cr.P.C. was filed for summoning the present petitioners after examination-in-chief of the complainant conducted on 03.06.2016. The learned trial Court vide the impugned order dated 23.09.2016 summoned the present petitioners. Aggrieved therefrom the present petition has been filed.

Learned counsel for the petitioners vehemently argues that the

only allegation raised against the petitioners is that they used to instigate the complainant's husband. It is further submitted that all the petitioners are admittedly living separately from the complainant and her in-laws family. Petitioner No.2 in fact is stated to be living in a village and not even at Sonapat. Moreover, it is submitted that there is no medical evidence on record to substantiate any of the allegations regarding physical abuse. The present petitioners, it is submitted, have been needlessly implicated only to increase the ambit of the proceedings against the in-laws family. No further evidence has come on record which would further justify the summoning of the present petitioners under Section 319 Cr.P.C. It is, thus, prayed that the present petition be allowed.

Learned counsel for the complainant/respondent No.2 while refuting the aforesaid arguments submits that specific allegations have been levelled against all the three petitioners. They were wrongly declared to be innocent by the Investigating agency. There is no basis for declaring them innocent. It is however not denied that there is no medical evidence on record at this stage. It is also not denied that all the three petitioners are living separately though in respect to petitioners No. 1 and 3 it is submitted that they are living near the matrimonial home of the complainant.

I have heard learned counsel for the parties and have gone through the file with their able assistance.

Petitioner No.1 is the paternal uncle (Taya) of the complainant's husband). Petitioner No.2 is a cousin brother of the complainant's husband i.e. son of another paternal uncle (Taya) and petitioner No.3 is the husband of the paternal aunt (Fufad) of the complainant's husband. It is not in dispute that all the three petitioners were not living with the complainant, her

husband or their family. They are admittedly living separately. Petitioner No.2 is living at village Tewli, Tehsil Ganaur, Sonapat.

A perusal of the complaint on the basis of which the FIR has been registered indeed reveals that allegation against the said petitioners is of instigating the complainant's husband for harassing and troubling the complainant. A general allegation has been raised against the petitioners along with other accused named in the FIR that they pressurized her to abort the child. No specific allegation of physical abuse qua the present petitioners has been raised. It is further not in dispute that at this stage there is no medical evidence on record to reflect physical abuse. The petitioners were found innocent on investigation conducted by the police authorities. It is mentioned in the final report under Section 173 Cr.P.C. that there is nothing to indicate involvement of the petitioners in the said matter. It is observed that no medical evidence was put forth by the complainant neither was any witness produced by her. The co-accused i.e. the husband and parents-in-law of the complainant are admittedly facing trial in this case. The learned trial Court has indeed erred in summoning the petitioners as additional accused to face trial in the above-said FIR vide impugned order dated 23.09.2016.

The Hon'ble Supreme Court in ***Hardeep Singh v. State of Punjab*** (2014) 3 SCC 92 held as under:-

“95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 Cr.P.C., though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in

Vikas v. State of Rajasthan (2014) 3 SCC 321, held that on the objective satisfaction of the court a person may be “arrested” or “summoned”, as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

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105. 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.

106. 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.”

The aforesaid view was reiterated by Hon'ble the Supreme Court in ***Brijendra Singh & others v. State of Rajasthan*** 2017 SCC Online SC 491.

In the present case, there is no such strong and cogent evidence at this stage which would compel the Court to conclude the existence of something more than a *prima facie* case but short of satisfaction to an extent that the evidence if it goes unrebutted would lead to conviction.

In this view of the matter, impugned order dated 23.09.2016 summoning the petitioners to face trial as additional accused is set aside. This petition is accordingly allowed.

It is clarified that none of the observations in this order are an expression of opinion on the merits of the case qua the accused facing trial and shall have no bearing on the trial qua them. Neither would it be a bar to summon the petitioners in case any fresh, relevant evidence comes on record.

30.11.2017
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(LISA GILL)
JUDGE

Note: Whether speaking/reasoned
Whether Reportable:

Yes / No
Yes / No