

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

CRR No.4231 of 2016 (O&M)

Date of decision: 21.03.2017

Ishu

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Ranjeet Singh Godara, Advocate
for the petitioner.

REKHA MITTAL J.

The present petition directs challenge against order dated 31.08.2016 passed by the Additional Sessions Judge, Fazilka whereby order dated 21.08.2015 passed by the Judicial Magistrate Ist Class, Abohar summoning respondents No.2 and 3 as additional accused under Section 319 Cr.P.C. has been set-aside and the application filed by the prosecution for summoning of additional accused in trial pertaining to FIR No.102 dated 28.10.2012 for offence under Sections 498-A, 406 read with Section 34 of the Indian Penal Code (in short 'IPC') registered at Police Station Khuian Sarwar has been dismissed.

A brief backdrop of the case is that the petitioner was married to Saurabh son of Ram Kumar resident of 26 LNP, Ghamuwali on 07.12.2008. She levelled allegations against her husband and his family members including respondents No.2 and 3 (married sisters of the husband) with regard to demand of dowry, harassment in connection thereof and misappropriation of her *Istridhan* constituting offence under Sections 406 and 498-A IPC. On completion of investigation,

challan was presented against Saurabh, Gauri Shankar son of Ram Kumar, Ram Kumar, father of Saurabh and Roshni @ Guddi, mother-in-law of the complainant whereas respondents No.2 and 3 namely Kiran wife of Shushant Rinwa and Maya @ Rupali wife of Rupinder Singh were kept in Column No.2. After framing of charge against the accused already before the Court, the prosecution filed application under Section 319 Cr.P.C. for summoning Kiran and Maya @ Rupali as additional accused. The learned trial Court, vide order dated 21.08.2015 summoned respondents No.2 and 3 to face trial for offence under Sections 406 and 498-A IPC along with the accused already before the Court.

Feeling dis-satisfied with the order passed by the trial Court, respondents No.2 and 3 preferred a revision before the Court of Sessions that came to be decided in their favour and the order passed by the trial Court summoning the additional accused was ordered to be set-aside.

Feeling aggrieved by the order passed by the Revisional Court, the present petition has been preferred by the complainant.

Counsel for the petitioner has submitted that the Revisional Court committed a serious error rather illegality by interfering in the order passed by the trial Court *albeit* the fact that scope of interference by the Revisional Court is quite limited. It is further argued that the petitioner in her first version given to the police, basis of the FIR as well as in her testimony recorded during trial has attributed specific role to respondents No.2 and 3, sufficient to summon them as additional accused in exercise of jurisdiction under Section 319 Cr.P.C.

I have heard counsel for the petitioner and perused the paperbook particularly the orders passed by the trial Court and the Court in revision but find that the petition is devoid of merit and liable to be dismissed.

Before advertng to the submissions made by counsel for the petitioner, it is appropriate to recapitulate the law laid down by Hon'ble the Supreme Court of India in Constitution Bench judgment ***“Hardeep Singh vs State of Punjab and others”*** with connected cases **2014(1) RCR (Criminal) 623**. The Hon'ble Court on the basis of reference made to a Larger Bench with regard to 02 questions detailed in para 2 of the judgment actually formulated 05 questions for answer, detailed in para 5 thereof. Question No.3 relates to whether the word ***'evidence'*** used under Section 319(1) Cr.P.C. includes the evidence collected during investigation or the word ***'evidence'*** is limited to the evidence recorded during trial and the question was answered by holding that evidence is limited to the evidence recorded during enquiry or trial. With regard to evidence during enquiry, the Court has held that the enquiry refers to enquiry conducted by the Court under Sections 200, 201, 202 Cr.P.C. and Section 398 Cr.P.C. That being so, evidence collected during investigation cannot form the basis for summoning an additional accused under Section 319 Cr.P.C.

The 4th question culled out in the judgment is ***“What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319(1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood convicted?”***

This question has been answered in the following terms:-

“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 un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C.”

It has also been held by the Court that *“power under Section 319 Cr.P.C is a discretionary and 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.”*

Coming to the case at hand, admittedly, respondents No.2 and 3 are the married sisters-in-law of the complainant and their marriage was performed prior to marriage of the complainant with Saurabh. It is also not denied that respondents No.2 and 3 are leading a happy married life in their respective matrimonial homes. Perusal of the order passed by the learned trial Court would evident that after taking note of the detailed allegations made in the complaint Ex.PA submitted to the SSP, Fazilka, in concluding portion of para 5 of the order, the

Court has held, quoted thus:-

“However, when the complainant appeared in the Court, she also reiterated that accused – Kiran and Maya were entrusted with the dowry articles and they also misappropriated her Istridhan. At the same time, there are specific allegations against both the accused that whenever they both came to her matrimonial home, behavior of accused got changed and they used to demand dowry articles. Therefore, the specific allegations against accused – Kiran and Maya cannot be over-ruled here. Since at this stage, there is sufficient evidence against the proposed accused – Kiran and Maya that they were entrusted with dowry articles of the complainant and they have misappropriated the same and specific role has been attributed to both the accused. In view of the oral as well as documentary evidence at this stage, both the accused – Kiran and Maya @ Rupali are ordered to be summoned to face trial with co-accused under Sections 406/498-A read with Section 34 IPC for 09.09.2015.”

On a pointed query raised by the Court as to the evidence with regard to entrustment and misappropriation of articles of dowry, counsel has submitted that respondents No.2 and 3 were entrusted with articles of furniture such as sofa set and dressing table. Perusal of the statement of the complainant would show that as per her testimony 02 – 03 articles were stated to be entrusted to each of the persons arraigned as accused in the FIR. She has deposed that *“one sofa set and one*

dressing table were handed-over to my sisters-in-law.” She has not specifically named the sister-in-law to whom sofa set and dressing table were handed-over. It is not the plea of the complainant that the said sister-in-law had taken away the sofa set and the dressing table to her matrimonial home in order to allege misappropriation of these articles. This apart, there is no such satisfaction recorded by the trial Court that evidence adduced before the Court proves something more than a *prima facie* case in order to summon the married sisters-in-law of the complainant who were found innocent and kept in Column No.2 of the challan. That being so, no error much less illegality can be found in the order passed by the Revisional Court that has actually rectified the error committed by the trial Court and saved respondents No.2 and 3 from rigmarole of criminal proceedings that bring lot of agony and misery.

For the foregoing reasons, finding no merit, the petition fails and is accordingly dismissed *in limine*.

(REKHA MITTAL)
JUDGE

21.03.2017
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No