

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

Crl. Revision No. 4689 of 2016 (O&M)
Date of decision: November 14, 2017

Gurbachan Kaur and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. N.S. Sodhi, Advocate
for the petitioner.

Mr. M.S. Nagra, DAG, Punjab.

JAISHREE THAKUR, J.

Crl. Misc. 39576 of 2016

For the reasons mentioned in the criminal miscellaneous application, the delay of 108 days in filing the revision is condoned.

Main case

1. The instant petition has been filed under Section 401 of the Code of Criminal Procedure (for short '**the Code**') seeking to quash/setting aside the order dated 06.04.2016 whereby the petitioners have been summoned to face trial under Section 304-B read with Section 34 IPC and further to set aside the order dated 01.06.2016 by which learned Addl. Sessions Judge has framed charges under Section 304-B IPC against the petitioners.

2. The petitioners herein are mother-in-law and sister-in-law of the deceased Jaswinder Kaur, who have been named in the FIR No. 166 dated

30.06.2014 under Section 304-B IPC registered at Police Station Patti District Tarn Taran.

3. In brief, Jaswinder Kaur was married with Sukhchain Singh petitioner who was serving as a Naik in Army and was posted at Jhansi, Rajasthan. The deceased committed suicide while in her matrimonial home by consuming poison on 30.06.2014. Father of the deceased Malkit Singh got an FIR registered against Sukhchain Singh, husband of the deceased, his mother and sister, the present petitioners. He also filed a petition before this Court, which was registered as **CRM-M-27430-2014** titled “Malkeet Singh Vs. State of Punjab and others”, seeking transfer of investigation of the case FIR No. 166 dated 30.06.2014 under Section 304-B IPC registered at Police Station Tarn Taran to Central Bureau of Investigation or Crime Branch Panjab, alleging that the police has failed to discharge its primary duty in investigating the case in fair, transparent and impartial manner. The said petition was dismissed of by this Court on the ground that during investigation, it was found that mother-in-law was not present whereas sister-in-law was married prior thereto i.e. about 16-17 years before the marriage of the deceased with the son of the petitioners. Learned Single Judge has observed that no special reasons have been made to transfer the case to Central Bureau of Investigation or Crime Branch Punjab. After the investigation of the matter, only Sukhchain Singh was charged under Section 304-B IPC, however, on the basis of a statement suffered by the complainant Makit Singh on 20.1.2016 before the Additional Sessions Judge, Tarn Taran, both the petitioners No.1 & 2 were summoned as additional accused for offence under Section 304-B read with Section 34

IPC by an order dated 06.04.2016 (Annexure P-4).

4. Learned counsel appearing on behalf of the petitioners contends that during trial in the statement of Malkit Singh submitted that Gurbachan Kaur and Paramjit Kaur, petitioners No.1 & 2 respectively used to harass his daughter on account of bringing less dowry in the marriage while stating that Paramjit Kaur, petitioner No.2, though married, used to reside in her parental home. It was also stated that Sukhchain Singh (his son-in-law) asked him to bring a big car and returned the Alto car that had been given to him in the marriage. On the basis of the statement given, an application under Section 319 of the Code was initiated seeking to summon the petitioners, which application was allowed by impugned order dated 06.04.2016 (Annexure P-4).

5. Learned counsel for the petitioners contends that the allegations in the FIR and in the statement of Malkit Singh are vague and non-specific. It is submitted that a reading of the statement itself would show that the main allegation of demand of dowry is against Sukhchain Singh, husband of the deceased with several discrepancies therein. In one breath Malkit Singh is stating that Paramajit Kaur, petitioner No.2 is residing in her parental home, while at the same time submitting that she is residing in her matrimonial home at village Kirtowal Kalan. It is also argued that as per the enquiry conducted, petitioner No.1 Gurbachan Kaur was at her parental house at village Ghariala and Paramjit Kaur petitioner No.2 was in her matrimonial home in village Kirtowal Kalan. It is argued that the enquiry report would reveal that Sukhchain Singh was serving in Indian Army and the deceased Jaswinder Kaur was eager to join the company of her husband,

however, Sukhchain Singh was unable to take her with him and this was a root cause for their altercation. Sukhchain Singh was to return to duty after availing the leave and at that time after altercation, she consumed poison. The enquiry report only found Sukhchain Singh to be accused and recommended that challan be put up against him. It is submitted that the dowry articles as well as the gold ornaments have been handed over as would be evident from Annexure P-8 (Colly.), which is memo of recovery of gold and dowry articles.

6. Learned counsel for the petitioner also relies upon a judgment rendered in ***Hardeep Singh vs. State of Punjab and others, 2014 (1) R.C.R. (Criminal) 623 and Barjinder Singh and others vs. State of Rajasthan (2017) 7 SCC 706*** to argue that without any substantial evidence, summoning under Section 319 of the Code would be wholly unsustainable. It is argued that no new evidence is available on the recorded on the basis of which the trial Court could have made up its mind to summon the petitioners as additional accused. It is submitted that the test as laid down in ***Hardeep Singh's case (supra)*** is that for the Courts to summon a person as an additional accused, there has to be strong evidence available other than mere probability.

7. *Per contra*, learned counsel appearing on behalf of the respondent-State submits that the complainant herein had specifically submitted there was a demand of dowry for a big car by Sukhchain Singh and that a specific allegation had been made that the petitioners herein were harassing his daughter on account of dowry which led to his daughter consuming a poisonous substance. It is on the basis of this statement that the

petitioners herein have rightly been summoned under Section 319 of the Code and charged with offence under Section 304-B IPC.

8. I have heard learned counsel for the parties and have pursued the case file very carefully.

9. The law is now well settled as regards summoning a person as an additional accused under Section 319 of the Code. The power to summon a person as an additional accused is undisputed, but the same has to be exercised sparingly, with caution and to be exercised in order to ensure that the culprit does not get away. In ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92***, the Constitution bench of the Supreme Court held:

“105. Power under Section 319 CrPC 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 un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused.”(emphasis supplied).

10. The Supreme Court in **Brijendra Singh and others vs State of Rajasthan** *supra* while summing up the ratio as laid down in Hardeep Singh's case *supra* held:

*“Power under **Section 319 Cr.P.C.** can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the 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 offence. The ‘evidence’ herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilized for corroboration and to support*

*the evidence recorded by the Court to invoke the power under **Section 319 Cr.P.C.** No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under **Section 319 Cr.P.C.** and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom chargesheet was filed. 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 case in hand, the matter was investigated and the challan was put up only against the husband Sukhchain Singh as investigation revealed that there was a demand of dowry by the husband for a bigger car. During investigation, it was found that mother-in-law was not present at the relevant time and the sister-in-law was married prior thereto i.e. about 16-17 years before the marriage of the deceased with the son of the petitioner no 1. Other than the statement that was recorded of Malkit Singh no fresh evidence came on the record to establish that the deceased had been subjected to harassment by the petitioners on account of demand of dowry,

leading to the deceased committing suicide. It is the same statement that was made before the investigating officer. Even before this court no fresh or relevant evidence has sought to be relied upon other than the bald statement of the complainant. As has been held by the Supreme Court, to summon an accused under section 319 of the Code, the evidence that has to be looked into is such, that if goes unrebutted, it would lead to conviction. The same is lacking in the instant case. No new evidence has come on record during trial, for the trial court to have exercised its power under Section 319 of the Code to summon the petitioners.

12. For the reasons stated above, this revision is allowed, the impugned order dated 06.04.2016, whereby the petitioners have been summoned to face trial under Section 304-B read with Section 34 IPC, is set aside and as a consequent thereof order dated 01.06.2016, by which learned Addl. Sessions Judge has framed charges under Section 304-B IPC against the petitioners is also set aside.

November 14, 2017
Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned Yes.
Whether reportable No.