

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

**CRR No. 2106 of 2017 (O&M)
Date of decision: 05.07.2017**

Rohit Sharma

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Arun Singhal, Advocate,
for the petitioner.

JAISHREE THAKUR, J. (Oral)

Aggrieved against the order dated 06.03.2017 passed by learned Additional Sessions Judge, Sonapat rejecting the application filed by the complainant, under Section 319 Cr.P.C., for summoning respondents Devender son of Ram Narain and Pooja, wife of Devender as additional accused to face trial, the instant revision petition has been filed.

In brief, the facts are that Rohit-complainant, petitioner herein, instituted proceedings by way of FIR No. 312 dated 09.09.2016, under Sections 304-B, 201 and 120-B read with Section 34 of the IPC at Police Station Civil Lines, Sonapat alleging that his sister, who was married with Harsh son of Surender, resident of H. No. 12/18, Bhagatpura Diwan Chakki Wali Gali, Old DC Road, Sonapat, on 16.04.2106, had died within a short period of her marriage. It was alleged that he had given sufficient dowry in marriage but despite this, her in-laws were not satisfied. It was also alleged that husband of his sister was also having illicit relationship with his aunt, while further alleging that all above named persons after hatching a conspiracy had killed his sister on 09.09.2016. The matter was investigated

and the police had challaned the husband and his father, however, despite his evidence, the police had not challaned Devender and his wife Pooja. An application under Section 319 Cr.P.C. was preferred requesting that the aforesaid persons be summoned as additional accused to face trial along with the main accused. Learned Additional Sessions Judge, after appreciating the evidence on record and the statement recorded, declined to grant relief as sought on the ground that there was no cogent evidence that has come forth to establish with culpability of the persons sought to be summoned. In this regard, reliance was upon ***Hardeep Singh vs. State of Punjab & others, 2014 (3) SCC 92.***

Learned counsel for the petitioner would submit that the order rejecting the application under Section 319 Cr.P.C. is not sustainable in view of the fact that the sister of the petitioner had died within a short period of her marriage by hanging on account of the fact that there was specific demand of dowry by the aforesaid persons.

I have heard learned counsel for the petitioner and have also perused the record of the case.

Admittedly, FIR in question came to be registered at the behest of Rohit Sharma, the petitioner herein. A reading of the FIR would show that his sister Archana-deceased was married with Harsh on 19.04.2016. In the FIR, it was stated that the in-laws of the deceased were not satisfied with the dowry articles and a reference has been made that uncle and aunt of the husband used to harass her for bringing less dowry, while further submitting that merely 8 – 10 days ago, Harsh had taken Rs. 2 lacs. It was further alleged that he had come to know that Harsh was having an illicit relationship with his aunt Pooja. On investigation, the police did not deem it

fit to file challan against Devender and Pooja. A reading of the FIR does not show that there was any specific demand of dowry either by Devender or his wife Pooja, who are the uncle and aunt of the husband of the deceased. Other than a vague reference that Harsh was having illicit relationship with his aunt, there is nothing else available on the record. It is only in his statement recorded as PW-1, a reference has been made that they all were living in joint family and having a joint mess. No doubt this Court has power under Section 319 Cr.P.C. to summon an additional accused but the power has to be exercised fairly and only in those cases where the circumstances of the case so warrant. The law in this regard is well settled in *Hardeep Singh's case (supra)* which has deliberated issues related to powers under Section 319 Cr.P.C. to summon an additional accused. In *Hardeep Singh's case (supra)* while dealing with the numerous judgments, the Hon'ble Supreme Court has laid down the following ratio:

“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 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. 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.”

On reading of the statement recorded in the FIR, it is observed that there is no cogent evidence laid before the Court other than the bald allegations. Learned Additional Sessions Judge noted that the complainant has made an improvement in his statement while deposing in Court. After taking the note of the report under Section 173 Cr.P.C., it was noted that Devender and Pooja were not found to be involved in the commission of the offence while husband and father-in-law were already facing trial.

Since there is no cogent evidence coming forth other than the statement of the complainant which improves the versions as given in the FIR, no ground is made out for summoning the said persons as additional accused. The evidence that has to be brought on the record has to be strong enough to rebut presumption and not mere statement of probability.

In view of above, this Court finds no reason to interfere in the well reasoned order passed by the Additional Sessions Judge, Sonapat dismissing the application filed under Section 319 Cr.P.C.

Petition stands dismissed.

July 05, 2017

Ansari

**(JAISHREE THAKUR)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*