

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

Date of Decision: 06.08.2018

1. CRM-M-15721-2012 (O&M)

Gurdev Singh

....Petitioner

Versus

State of Punjab and another

....Respondents

2. CRM-M-30584-2012 (O&M)

Baljinder Kaur

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. H.S. Randhawa, Advocate for
Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Jagmohan Ghumman, D.A.G., Punjab.

ANITA CHAUDHRY, J

The petitioners have been summoned in FIR No.192 dated 15.02.2007 registered at Police Station, Phase-II, Mohali. They were not arraigned as accused in the charge-sheet. Charges were framed against whom the challan was filed and prosecution evidence was being recorded. An application under Section 319 Cr.P.C. was moved which had been allowed and the petitioners in both the petitions were summoned to face trial along with the other accused. As both the petitions arise out of the same

FIR, therefore, I propose to take them up together.

The trial Court allowed the applications. The order was challenged by the petitioners before the Revisional Court. The revision petitions was also dismissed.

The factual details pertaining to the FIR and registration of the case against other persons are as under:-

The complainant on 15.05.2007, had stated that she had married Inderjit Singh on 03.12.2000. It was alleged that sufficient dowry was given at the time of the marriage. After sometime, the in-laws family started harassing her for bringing less dowry and beat her on petty matters. The complainant alleged that her mother-in-law, father-in-law and uncle (Taya) Gurdev Singh, Nanad-Baljinder Kaur who was married and was living in different village, started torturing her for bringing less dowry. A child was born to the couple in November, 2002. On the birth of the girl child, the in-laws family started beating her and stopped giving her money. The complainant alleged that her brother used to financially support her. A demand of ring and earrings was made on the birth of the child. The demands kept on raising. It was claimed that the mother-in-law, father-in-law and the husband wanted to instal a Lathe machine in the plot and she was asked to get Rs.1 lakh from her parents, failing which, she would have no place in their house. The allegations were that she was beaten up and turned out of the matrimonial home and she called her parents to Mohali and her brother and his friend Karam Singh came and spoke to her in-laws family who promised that they would arrange money and later her brother and his friend came to the in-laws house and gave Rs.1 lakh to the father-in-law who gave money to Inderjit who counted the amount and thereafter, he

handed the amount to his mother and asked her to keep in the trunk. It was asserted that the behaviour of the in-laws remained normal for sometime. It was alleged that her sister-in-law Baljinder Kaur came to the matrimonial house one day and the father-in-law, mother-in-law and sister-in-law were sitting together and she was called in the room and her husband told her that his sister required Rs.50,000/- and she has to get that money from her parents and when she stated that they were poor and would not be able to give any money, thereupon, the sister-in-law and mother-in-law started beating her and the husband also joined her. The complainant narrated the incident to her brother who along with friend Ajit Pal Singh came to the house and confronted her husband who hurled abuses and her brother left promising to arrange the money. The complainant further stated that her brother and Ajit Pal Singh came to the in-laws house when Baljinder Kaur and Inderjit were present and a sum of Rs.50,000/- were handed over to Inderjit and he counted the same and handed it over to Baljinder Kaur. It was further alleged that on 09.05.2007, the husband, mother-in-law and father-in-law demanded a sum of Rs.2 lakhs and she was beaten up. It was also claimed that she was 6 months' pregnant and received injuries and she informed her parents on telephone and her brother and his friends came to Mohali and took her to a Civil Hospital. It was claimed that Inderjit called his friends and started beating her brothers and they were detained in a room and beaten up. Meanwhile a passerby informed the police and police arrived on the scene.

The police investigated the complaint. An inquiry was held by the DSP and it was found that during investigation there was no evidence against Baljinder Kaur, Surinder Kaur and Gurdev Singh. The police did not

file the challan against the petitioners.

The trial commenced and Simrat Kaur appeared in the witness box and gave her statement and named the additional persons, thereafter the application under Section 319 Cr.P.C. was filed which was allowed.

I have heard both the parties.

Learned counsel for the petitioners at the outset urges that there was interim order vide which the trial as against the petitioners has been stayed and the trial Court has acquitted the accused and the statement of Simrat Kaur and Inderjit Singh were disbelieved. It was contended that the sister-in-law was married much earlier and her first child was born in 1994 prior to the marriage of Simrat Kaur and the FIR does not give any particular date of beatings and there is no MLR. It was alleged that the FIR had been lodged after 6 ½ years of the marriage and sister-in-law and the Taya were living separately and sweeping allegations have been levelled and no role has been assigned to the Uncle. It was alleged that the police had thoroughly investigated the matter and had given its report (Annexre P-2).

On the other hand, learned State counsel argued that the trial Court had rightly exercised its powers on the basis of deposition of the witness which were in the form of evidence to the effect that they had also harassed the complainant.

The powers of the Court to summon additional accused cannot be disputed. This provision is meant to achieve the object that the real culprit should not go unpunished.

It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of

the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 CrPC?

The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.” It also goes without saying that Section 319Cr.P.C., which is an enabling provision empowering the Court to take appropriate steps for proceeding against any person, not being an accused, can be exercised at any time after the charge-sheet is filed and before the pronouncement of the judgment.

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 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter.

The Constitutional Bench in ***'Hardeep Singh Vs. State of Punjab, 2014(3) SCC 92'*** explained the purpose behind the provisions in the following manner:-

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.

When we translate the principles laid above and apply to the facts of the case, it is clear that the trial Court acted in a casual manner in passing the summoning order against the petitioners. No doubt the petitioners were named in the FIR. Investigation was carried out. On the basis of the material collected by them, referred in the inquiry report, it was found that the sister-in-law was married prior in point of time and was living separately. Even the Taya was living separately and were not challaned.

No specific date was given as to when the incidents of beatings had taken place. Those were intentionally not given and wide sweeping allegations have been made. The police investigation revealed that the statements of the witnesses regarding the presence of the petitioners at the time of beatings were doubtful and did not inspire confidence. The record was with the trial Court. Notwithstanding the same, the trial Court went by the oral depositions of the complainant with no other material to support the verbal version. The evidence recorded during trial was nothing more than the statement which was already given in the complaint and the statement under Section 161 Cr.P.C. The trial Court had also failed to record its satisfaction and merely allowed the application stating that the prosecution had *prima facie* established the involvement of Gurdev Singh and Baljinder Kaur. The basis to be applied was that the evidence should have been more than *prima facie* case which was missing in this case, therefore, both the petitions are allowed. The impugned orders are *set aside*.

August 06, 2018
ps-I

(ANITA CHAUDHRY)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No