

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

Crl. Misc. No.M-13176 of 2016(O&M)

Date of Decision: 20.09.2018

Kamal Kumar Sharma & Ors.

.. Petitioners

Vs.

State of Punjab & Ors.

.. Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. Aditya Dassaur, Advocate
for petitioner No.3 Preeti @ Musaan.**

**Petition qua petitioners No.1 and 2
dismissed as withdrawn on 22.04.2016.**

Mr. Ms. Jaspreet Kaur, AAG Punjab.

**Mr. Ankur Mittal, Advocate for
respondents No.2 and 3.**

ANITA CHAUDHRY, J.

The petitioners had laid challenge to the order dated 01.10.2015 vide which the revision filed by State was accepted and the order dismissing the application filed under Section 319 Cr.P.C. was set aside.

The facts first. FIR No.80 dated 09.10.2013 was lodged by respondent No.2 under Sections 406 and 498-A IPC at Police Station Women Cell, Jalandhar City, alleging harassment and maltreatment of his daughter-respondent No.3 at the instance of her husband, in-laws and petitioner No.3. The FIR is lengthy. The marriage of daughter of complainant was solemnized with Deepak Sharma on 26.01.2008 and gold jewellery and cash was, which constitute *istridhan*, was entrusted to the accused. Cash was also given in lieu of the car, on the demand made by the

accused. After the marriage, the accused started maltreating his daughter for more dowry. Though, it was generally said that all the accused harassed his daughter, the allegations against petitioners No.3 were that she along with other accused was entrusted with the dowry articles and she had been married in nearby locality and used to visit frequently her parental home and had harassed and misbehaved with the daughter of the complainant.

The complaint was enquired into and FIR was registered only against the husband and parents-in-law and petitioner No.3 Preet was found innocent.

After investigation, the investigating agency had filed the challan only against the husband and the parents-in-law were kept in column No.2 of the challan.

At the trial, the complainant stepped in the witness box as PW1 and was partly cross-examined. An application was filed by the prosecution seeking summoning of the parents-in-law as well as petitioner No.3 as additional accused.

Learned trial Court vide order dated 12.06.2015 refused to exercise the discretion under Section 319 Cr.P.C. and dismissed the application.

As noted above, the revision filed by the State was allowed and the order of the trial Court was set aside.

When the petition came up for hearing on 22.04.2016, learned counsel had withdrawn the same qua petitioners No.1 Kamal Kumar Sharma and petitioner No.2 Rita Sharma and notice was issued only in respect of petitioner No.3. She was directed to appear before the trial Court. It appears from record that respondent No.2-complainant Pritam Singh also filed a

complaint and the trial Court clubbed the trial in the FIR case as well as complaint case and framed the charges against the accused. No material regarding the allegations in the complaint had been filed on record and this Court had proceeded to evaluate the allegations levelled in the FIR against petitioner No.3 alone.

The grievance of petitioner No.3 is that the FIR was not registered against her and during enquiry she was found innocent and exaggerated statement was made by the complainant wherein he roped her in the incident dated 30.07.2013 claiming that attempt was made to kill his daughter by the accused, including petitioner No.3. According to learned counsel, there were no specific allegations against the petitioner. It was averred that she had been named subsequently only because she was sister of Deepak Sharma just to widen the net. She was the married sister-in-law and did not interfere in the married life of couple. According to learned counsel, though the Revisional Court set aside the order of the Magistrate and directed to pass fresh order on the application under Section 319 Cr.P.C., but it made observations on merits that there existed sufficient grounds to invoke the jurisdiction under Section 319 Cr.P.C.

State had admitted that during enquiry on the complaint, petitioner No.3 was found innocent and FIR was not registered against her.

In the reply filed by respondents No.2 and 3, it was admitted that petitioner No.3 was married and living separately, but she was instrumental in causing atrocities committed with respondent No.3. It was averred that charge against petitioner No.3 had been framed and she had alternate remedy to challenge it. According to learned counsel, petitioner No.3 had caused harassment and maltreatment to respondent No.3 for dowry

and there are specific allegations of entrustment of dowry, which she misappropriated.

I have heard learned counsel for the parties and have gone through the paper-book carefully.

In Hardeep Singh Vs. State of Punjab, 2014(1) RCR(C) 623 (SC), the Hon'ble Apex Court deliberated on the issue regarding the powers under Section 319 Cr.P.C. Dealing with the question regarding degree of satisfaction required for invoking the power under Section 319 Cr.P.C., numerous judgments were taken into account and it was observed:-

98. 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.

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."

It is apparent that for the purpose of forming an opinion to summon an additional accused, the Court must be satisfied that there exists an extra ordinary case for exercise of jurisdiction. The case in hands needs to be analyzed in view of the law laid down referred to above.

It was not in dispute that FIR was not registered against petitioner No.3. She was the married sister-in-law and residing separately. A perusal of the FIR would reveal that there are general sweeping allegations against petitioner No.3 that she had been entrusted with dowry articles along with other accused and she caused harassment and maltreatment of respondent No.3 for more dowry. It is apparent that the marriage took place on 26.01.2008 and the complaint was given to the police on 05.08.2013. It is not shown that during all these years any complaint had been made by the complainant or his daughter about non-return or misappropriation of dowry articles. Otherwise also, it cannot be believed that sister-in-law had been entrusted with dowry articles. Perusal of FIR would further show that the allegations primarily revolve around the conduct of the husband and the parents-in-law. In the incident dated 30.07.2013 when respondent No.3 was claimed to have been strangulated, there was no reference of presence of petitioner No.3. But respondent No.2 made improvement in his statement in the Court by naming petitioner No.3. Much more in the shape of strong

evidence was required to be led to prove the complicity of petitioner No.3 in the offence. During enquiry, the allegations made by the complainant and his daughter regarding complicity of petitioner No.3 were found incorrect by the investigating agency during enquiry. Though, it was contended on behalf of petitioner No.3 that the FIR against the petitioners was a counter-blast to FIR No. 48 dated 05.11.2013 registered by petitioner No.1 against respondents No.2, 3 and others, but this Court refrains from commenting thereupon but it needs to be said that there was no cogent and convincing evidence with the Revisional Court to form an opinion that there existed sufficient grounds to invoke the provisions under Section 319 Cr.P.C., so far as petitioner No.3 is concerned.

In ***Krishnappa v. State of Karnataka, 2004 (4) RCR (Criminal) 678***, the Court ruled that the power to summon an accused is an extraordinary power conferred on the Court and it should be used very sparingly and only if compelling reasons exist for taking cognizance against the person other than the accused.

The Apex Court in ***Sarabjit Singh and another v. State of Punjab and another*** reported as 2009(3) RCR (Criminal) 388 observed as follows:-

“17. The provision of Section 319 of the Code, on a plain reading, provides that such an extraordinary case has been made out must appear to the court. Has the criterion laid down by this Court in Municipal Corporation of Delhi (supra) been satisfied is the question? Indisputably, before an additional accused can be summoned for standing trial, the nature of the evidence should be such which would make out grounds for exercise of extraordinary power. The materials brought before the court must also be such which would

satisfy the court that it is one of those cases where its jurisdiction should be exercised sparingly. We may notice that in Y. Saraba Reddy v. Puthur Rami Reddy and Anr. [JT 2007 (6) SC 460], this Court opined:

"...Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates that evidence of witnesses given in Court..."

Similar view has been reiterated in the cases of **Asha Rani Vs. State of Punjab 2014(7) RCR(Crl.) 238, Suman Ashok Kumar Vs. State of Punjab 2012(4) CCR 115, Dalpreet Singh & Ors. Vs. State of Punjab & Ors. 2012(6) RCR(Crl.) 2315 and Sukkhu Raidas & Ors. Vs. State of U.P. & Anr. 2011(6) RCR(Crl.) 2582.**

In the considered opinion of this Court, the Revisional Court had erred in observing that there are sufficient grounds to invoke provisions under Section 319 Cr.P.C. qua petitioner No.3. Only because the complainant named her, was not enough to prove her complicity on the basis of exaggerated version. No new material had been produced on record by the complainant. The prima facie opinion which is to be formed requires stronger evidence than mere probability of the complicity of petitioner No.3.

Furthermore, in the case of **State of Haryana & Ors. Vs. Ch. Bhajan Lal & Ors. 1991(1) RCR (Crl.) 383 (SC)**, the Hon'ble Supreme Court had observed that where the proceeding is instituted with an ulterior motive or where the allegations made in the complaint are absurd and improbable, the Court would be within its power to quash the complaint/

FIR.

In view of the above, the petition is allowed and the impugned order as well as consequent proceedings conducted against petitioner No.3 only are set aside.

September 20, 2018
Jiten

(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned Yes/ No

Whether reportable Yes/ No