

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

**CRM-M-17304-2017(O&M)**

**Date of decision:-23.8.2018**

Chatar Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

**CORAM : HON'BLE MR. JUSTICE H.S. MADAAN**

**Present** : Mr.Sanjiv Gupta, Advocate  
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

Mr.K.B. Raheja, Advocate  
for respondent No.2.

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**H.S. MADAAN, J.**

This petition under Section 482 Cr.P.C. has been filed by petitioner – Chatar Singh seeking quashing of order dated 19.9.2016 passed by learned Additional Sessions Judge, Palwal vide which an application under Section 319 Cr.P.C. filed by the complainant for summoning of Rameshwari wife of Hukam Singh as an additional accused has been rejected.

Briefly stated, facts of the case are that FIR in question was lodged by complainant Chatar Singh son of Raghubir Singh, resident of village Mandkol, who in his statement to the police stated that his sister Rekha aged about 24-25 years was married with Sonu son of Hukam

Singh, resident of Mathapur Bistar, Delhi on 19.4.2014; that they had given dowry articles as per their capacity, however, Rekha was harassed and maltreated by her husband Sonu and mother-in-law Rameshwari stating that family of Rekha had not given dowry as per their status; that Rekha used to be given beatings also; that for the last 6-7 months prior to the incident, Rekha had been residing at her parental house; that on 20.3.2016, Sonu husband of Rekha and some other persons came to the parental house of Rekha to take her back; that the complainant was present at home; that Rekha was getting ready to return to her matrimonial home; that Sonu went to the room of Rekha and started talking loudly with her; that he came out of the room after about 20 minutes; that when the complainant and his brother Desh Raj went to the room, then they observed that Rekha was lying on the bed and was vomiting; that on being asked, she told that due to torture and harassment from her husband and mother-in-law, she has consumed celphos tablets; that she was removed to a local hospital from where she was referred to Safdarjang Hospital, Delhi; that she was taken there, however, Rekha expired at that hospital.

After registration of the formal FIR, the matter was investigated. Sonu accused was arrested in this case. On completion of investigation and other formalities, he was challaned. After presentation of challan against Sonu and commitment proceedings, the case was assigned to learned Additional Sessions Judge, Palwal, who framed formal charge against Sonu and trial against him proceeded, during the course of which statement of complainant Chatar Singh was recorded. Thereafter, an application under Section 319 Cr.P.C. was filed by the

complainant for summoning Rameshwari wife of Hukam Singh as an additional accused. That application was dismissed by the trial Court vide a detailed order and operative part of the order is as under:

3. *Learned counsel for the complainant has argued that name of Rameshwari was mentioned in the FIR and specific role was attributed to her, however, the local police in collusion with the accused did not challan the proposed accused. Attention of the Court has been invited tot he statement given by PW1-Chater Singh wherein he has stated that the deceased consumed the tablet containing poison on account of harassment given by accused Sonu and his mother for want of more dowry. Learned counsel for the complainant has strenuously argued that a person dying would not state a lie. It is submitted that in the interest of justice the application in hand be allowed and Rameshwari be directed to stand trial along with accused Sonu.*

4. *In Hardeep Singh V/s State of Punjab and others, 2014(1) RAJ 384(SC), it was held that the test that has to be applied for summoning u/s 319 of the Code is one which is more than a 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 the conviction. In the absence of such satisfaction, the Court should refrain from exercising power u/s 319 of the Code.*

5. *In Hukam Chand V/s State of Haryana, 2007(3)*

*RCR(Criminal) 141, it has been observed that when the accused was found innocent by the Investigating Agency and the complainant in the course of trial only reiterated the allegations made in the complaint then this cannot be considered as additional evidence and as such, the Court cannot summon the accused on the basis of this statement alone which was already considered by the police.*

6. *In Kansraj V/s State of Punjab and others, 2000(3) RCR(Criminal) 695, it has been held by Hon'ble Apex Court that a tendency has developed for roping in all the relations in dowry cases and if it is not discouraged it is likely to affect the case of the prosecution even against the real culprits. In nutshell, the Court is duty bound to see that provision of Section 319 of the Code is not used as a handle by the witness to bring another person in the arena of trial.*

7. *One of the essential ingredients u/s 304-B IPC and 113-B of Indian Evidence Act, 1872 is that soon before her death a married woman should be subjected to cruelty or harassment in connection with demand of dowry. PW1 Chater Singh has not only stated in the application/complaint (Ex.P1) but has also deposed that his sister Rekha, since deceased, had been living with him in village Mandkol for the last 6/7 months prior to the date of the incident. Soon before consuming the tablets containing poison the deceased had heated arguments for about 20 minutes with accused Sonu at her parental home and*

*therefore, the proposed accused Rameshwari who had no conversation with the deceased for the last 6/7 months could not be said to have prima facie committed the offence of dowry death so that she could be tried along with accused Sonu. Applying a ratio of law laid down in the aforementioned case to the facts in hand, the application is dismissed being devoid of any merit.*

Feeling aggrieved, the complainant has filed the present petition, notice of which was given to respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

Learned counsel for the petitioner has contended that Rameshwari, mother-in-law of the deceased is specifically named in the FIR and specific role has been attributed to her, but the local police in order to help the accused party did not challan her; that the complainant Chater Singh while appearing as PW1 has categorically deposed regarding culpability of Rameshwari; that the trial Court fell in error in dismissing the application under Section 319 Cr.P.C. and not summoning Rameshwari as an additional accused. He further argued that the parameters laid down in the landmark authority **Hardeep Singh Versus State of Punjab and others, 2014(1) RCR(Criminal) 623** have not been kept in view by the trial Court while dismissing the application and that this wrong be undone by setting aside the impugned order and Rameshwari be ordered to be summoned as an additional accused to face trial along with her son Sonu.

On the other hand, learned counsel for respondent No.2 – Rameshwari has vehemently defended the impugned order submitting that it is perfectly legal and valid and does not suffer from any infirmity; that as a matter of fact this petition is not maintainable as the complainant had remedy of filing a revision petition against the impugned order, which she did not do and in that eventuality, a petition under Section 482 Cr.P.C. cannot survive. In support of his that contention, he has referred to authority *Mohit alias Sonu and another Versus State of U.P. and another, 2013(3)RCR(Criminal)673*, wherein it was observed that in case of order of trial Judge refusing to summon a person as additional accused, the aggrieved party has remedy to file revision under Section 397/401 Cr.P.C. and petition under Section 482 Cr.P.C. is not maintainable since when there is a specific remedy provided by way of filing of appeal or revision, the inherent power under Section 482 Cr.P.C. or Section 151 Cr.P.C. cannot and should not be resorted to. Learned counsel further contended that the impugned order is dated 19.9.2016, which could be challenged within 90 days by way of filing revision petition. It was not so done and a petition under Section 482 Cr.P.C. was filed on 11.5.2017, which is clearly an attempt to wriggle out of rigor of limitation by a clever piece of drafting.

After hearing the rival contentions and going through the authorities referred to by learned counsel for the parties, I find that keeping in view the facts and circumstances of the case, the trial Court was justified in dismissing an application under Section 319 Cr.P.C. It is the own case of prosecution that the deceased was residing at her parental house 6-7 months prior to her death. Therefore, it is certainly

not a case of she being subjected to cruelty or harassment at the hands of her mother-in-law Rameshwari soon before her death. Furthermore, deceased Rekha had consumed poison at her parental house and not in the matrimonial home and a very important fact to be noticed is that Rameshwari was not present at the spot when Rekha had consumed poison. Sonu was challaned by the police for the reason that he had quarrelled with his wife in a separate room and thereafter she had consumed poison. He could be held up for that but not his mother Rameshwari, who was no where at the spot at the time when Rekha had consumed poison. In *Hardeep Singh's* case (supra), the Apex Court has observed that test for summoning of a person as additional accused is one which is more than a prima facie case as exercised at the time of framing of charge but short of satisfaction to an extent that the evidence if goes unrebutted would lead to the conviction. The trial Court exercising subjective satisfaction came to the conclusion that Ramewhari, who had no conversation with the deceased for the last 6-7 months could not be said to have prima facie committed the offence of dowry death so that she could be tried along with accused Sonu, as such the application had been dismissed.

I do not find any illegality or infirmity in such order, which might have called for interference by this Court while exercising jurisdiction under Section 482 Cr.P.C.

Therefore, the petition stands dismissed.

**(H.S.MADAAN)**  
**JUDGE**

**23.8.2018**  
**Brij**

**Whether reasoned/speaking : Yes/No**

**Whether reportable : Yes/No**