

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

CRM-M No. 35215 of 2015

DATE OF DECISION :- August 21, 2018

Khushal Chand Suneja

...Petitioner

Versus

State of Haryana and another

...Respondents

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

Present:- Ms. Baljit Mann, Advocate for the petitioner.

Ms. Aditi Girdhar, AAG, Haryana.

Mr. Raman Walia, Advocate for the complainant.

This petition under Section 482 Cr.P.C. for quashing of F.I.R. No. 190 dated 2.9.2013 under Sections 406/498-A IPC registered at Police Station Pinjore, District Panchkula and setting aside summoning order dated 7.8.2015 passed by Judicial Magistrate Ist Class, Kalka as well as order dated 18.9.2015 passed by Additional Sessions Judge, Panchkula dismissing the revision petition has been filed by petitioner Khushal Chand Suneja, who is aged about 72 years.

Briefly stated that facts of the case, as per prosecution story are that complainant Rekha Sharma, daughter of Ashwani Kumar Sharma, resident of House No. 1438/B-2, Kabir Panthi Mohalla, Pinjore had submitted a written complaint against her husband Amit Suneja, father-in-law Khushal Chand Suneja, sister-in-law Shalini and brother-in-law Naresh Kumar on the allegations of committing offence of fraud, cheating, demand

of dowry, cruelty, harassment, misappropriation of dowry articles and for adding offence of adultery against Amit Suneja.

On the basis of that complaint, formal F.I.R. was registered. After completion of investigation only Amit Suneja-husband of the complainant was challaned whereas the other persons mentioned as culprits in the F.I.R. were found to be innocent, as such their names were mentioned in column no. 2 of final report under Section 173 Cr.P.C. The trial against accused Amit Suneja proceeded during the course of which the complainant moved an application under Section 319 Cr.P.C. for summoning of Khushal Chand Suneja, Shalini and Naresh as additional accused. Vide order dated 7.8.2015 the application was accepted with the following observations :-

“8. Turning to the case in hand, the perusal of the complaint Ex. PW2/A and the applicant's testimony reveals that Khushal, Shalini and Naresh have also committed the alleged offence. So, finding force from the dictum laid down in Harpdeep Singh's case (supra), the present application is hereby allowed with no order as to costs.”

Khushal Chand Suneja challenged the said order by way of filing a revision petition, however, that revision petition was dismissed by Additional Sessions Judge, Panchkula vide order dated 18.9.2015. Against that order the petitioner has filed the instant petition under Section 482 Cr.P.C, notice of which was given to the respondents, who put in appearance.

I have heard learned counsel for the petitioner, learned counsel for respondent no. 2 and learned State counsel besides going through the

record.

Learned counsel for the petitioner has contended that petitioner is a widower, aged about 75 years, he has retired from Industries Department, Punjab, Chandigarh as Superintendent and thereafter has been residing at Ellanabad, District Sirsa whereas the complainant and her husband Amit Suneja, who is son of the petitioner and was employed as Senior Consultant in MNC at NOIDA had shifted to NOIDA i.e. at the place of Amit Suneja; that it was second marriage for both of them. Amit and Rekha could not live together as such Amit had filed a petition for divorce against the complainant on 8.7.2013, that immediately on receipt of summons in that case complainant lodged the present F.I.R. under Sections 406/498A IPC on 2.9.2013 involving her father-in-law the petitioner, her husband Amit and married sister of Amit namely Shalini and Shalini's husband Naresh. Though Shalini and Naresh are permanently settled in New Zealand; that marriage between the complainant and Amit Suneja was a simple affair where no exchange of gifts had taken place for the reason that it was a second marriage for both the spouses; the marriage party comprised of 23-24 person only from the side of the petitioner and 15-20 persons from the side of complainant; the expenses for the function were shared by both the families and only formal gifts were exchanged; that marriage of Amit and Rekha was registered on 23.6.2012 where both complainant and her father had made statements before the Registrar with regard to non giving or taking of dowry. After the marriage the complainant had started misbehaving with her husband; that a detailed enquiry had been conducted by Inspector Manjit Kaur from Crime Against Women Cell, Sector 12 ,

Panchkula who had submitted a report finding that petitioner had been residing separately at Ellanabad, Sirsa whereas the complainant had been residing at Pinjore during her pregnancy; that it was further observed that petitioner neither harassed nor maltreated the complainant on account of demand of dowry. It was recommended that F.I.R. be registered against Amit Juneja only.

After registration of the F.I.R. detailed investigation was carried out by ACP Kalka and challan was presented only against Amit whereas the petitioner, his daughter Shalini and her husband Naresh were found to be innocent.

Learned counsel for the petitioner has submitted that the F.I.R. which was lodged with malafide intention and the summoning order of petitioner while allowing petition under Section 319 Cr.P.C. are liable to be quashed and needful be done accordingly, whereas learned counsel appearing for the complainant-respondent no. 2 submits that no ground for quashing of F.I.R. and summoning order is made out, therefore, the petition be dismissed.

Learned counsel for the petitioner has pressed into service authority 'Hardeep Singh versus State of Punjab and others' by Constitutional Bench of Hon'ble Supreme Court where law on the subject was crystallized. It has been observed therein that for summoning the person as an additional accused under Section 319 Cr.P.C. there should be more than prima facie case.

In the case in hand, the order summoning the petitioner as additional accused does not show due application of mind. The trial Court

has nowhere made any such observation. Though it has been mentioned that finding force from dictum laid down in Hardeep Singh's case (supra) the application is being allowed but as how the present case fall within four corners thereof has not been discussed. The trial Court has not mentioned anywhere as to what new evidence was there before it except one which had already been considered by the investigating agency giving a clean chit to the petitioner. Similarly order passed by Additional Sessions Judge is devoted to discussing various authorities on the subject without pointing out as to how those authorities are applicable justifying summoning of the present petitioner as an additional accused.

Learned counsel for the petitioner has referred to authority 'Smt. Sushil Soni versus State of Haryana and others 2016(3) RCR (Criminal) 793' by a coordinate Bench of this Court wherein law with regard to Section 319 Cr.P.C. was summarized and explained as under :-

- “(i) A small suspicion or doubt is not sufficient to summon such person as an additional accused.
- (ii) The Court has to exercise its powers sparingly as summoning of a person as an additional accused is a serious matter.
- (iii) When the investigating agency has thoroughly investigated the matter and has found the persons to be summoned as an additional accused innocent then some evidence must be available on record during trial or inquiry which has not been considered by the investigating agency.
- (iv) Merely the statement of the complainant, ipso facto, cannot form the basis for summoning a person under Section 319 Criminal Procedure Code.”

Learned counsel for the petitioner has further referred to authority Hukam Chand and another vs. State of Haryana and another 2007 (3) R.C.R.(Criminal) 141, by a Coordinate Bench of this Court, wherein it has been held that Court cannot summon the accused on basis of statement alone which was already considered by Police and for summoning under Section 319 of the Criminal Procedure Code there has to be some evidence which would indicate the complicity of the persons who are sought to be summoned. The mere statement of complainant, ipso facto, cannot form the basis of summoning the persons under Section 319 Criminal Procedure Code.

On the other hand learned counsel for the complainant, while defending the impugned order passed by the trial Court and the order passed by the Court of Sessions, dismissing the revision petition preferred by the present petition, has submitted that no ground is made out to allow the present petition and the same should be dismissed.

After hearing the rival contentions, I find that keeping in view the facts and circumstances of the case, the order summoning the petitioner as additional accused and order dismissing the revision petition challenging such order are not sustainable and are liable to be quashed by way of exercising powers under Section 482 Cr.P.C. Therefore, the petition is accepted and impugned order with ancillary proceedings are quashed.

(H.S. MADAAN)
JUDGE

August 21, 2018

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No