

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

Criminal Misc.No.M-38180 of 2018 (O&M)

Date of Decision : 23.10.2018

Harpal Kaur and another

..... Petitioners

Versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present : Mr. Rahish Pahwa, Advocate
for the petitioners.

RAJ SHEKHAR ATTRI, J.

Through this petition, the petitioners have challenged the order dated 07.06.2018 (Annexure P-7), passed by the learned Judicial Magistrate Ist Class, Ludhiana, vide which the petitioners have been summoned to face trial on the application under Section 319 Cr.P.C., filed by the complainant/prosecution.

I have heard learned counsel for the petitioners and have gone through the record.

A bare perusal of the FIR and other material available on the record transpires that the petitioners have been specifically named and specific role has been attributed to them. The innocent lady has been beaten up on the ground to get rid of ghost from her.

This Court would like to reproduce hereunder the relevant extracts of the FIR:-

“On 22.05.2016 at about 8 o'clock at night my husband Sukhjinder Singh took me to the house of his bhua near Dhanna Singh Gurudwara on the pretext of taking medicine. There, he called my father in law Jora Singh and his brother

Paramjit Singh also and in the house his bhua Harpal Kaur and her son Jagseer Singh were already present. They started saying to me that either you take your belongings from the house or bring more money from your father to which, I refused. They said that there is ghost inhabited in you and we give treatment. My husband gave me severe beatings with stick. They all caught hold of my hair and said that in you comes the ghost of your mother Amro and we will take it out and then they gave me severe beatings, torn my clothes and asked me to dance for taking out ghost from me. In this manner they continued to beat me till 25.5.2017.”

During the investigation, the petitioners were exonerated by the investigating agency.

This Court has gone through the final police report. No cogent evidence has been assigned for their exoneration by the investigating officer. Hon'ble Supreme Court in **Hardeep Singh versus State of Punjab and others AIR 2014 Supreme Court 1400** has discussed in detail the applicability of Section 319 Cr.P.C from different angles. It has been concluded in para No.110 which reads as under:-

“We accordingly sum up our conclusions as follows:-

Question Nos.I & III

Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised ?

AND

Q.III Whether the word “evidence” used in Section 319 (1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word “evidence” is limited to the evidence recorded during trial ?

A. In Dharam Pal's (AIR 2013 SC 3018) case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not

named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused.

Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C. and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the charge-sheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.”

The police, during investigation is required to collect the evidence and not to critically examine the same. If a defence plea or general exception is available to the accused that may be noted down and reported to the Magistrate or the court. It is subject to judicial scrutiny and judicial courts are only competent to critically evaluate the evidence. The investigating agency has no role to discard the evidence especially, the direct evidence unless exceptional circumstances have been made out.

Even on scrutiny of the material available on the record, this court is of the view that prima facie case is made out to summon the petitioners as accused to face trial for the offences under Sections 323, 341, 506, 34 IPC. Thus, the impugned order does not suffer from any illegality,

irregularity or infirmity and the same does not call for any interference and is hereby affirmed.

Consequently, finding no merit in the instant petition, the same is dismissed. However, nothing express above shall effect the merits of the case.

23.10.2018
mamta

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
<i>Whether Reportable :</i>	<i>Yes/No</i>