

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

Crl. Misc. M-39139 of 2016 (O&M)
Date of Decision: May 23, 2018

Nirvair Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Aditya Dassaur, Advocate
for the petitioners.

Mr. A.S. Sandhu, Addl. AG Punjab.

Ms. G.K. Dulat, Advocate
for respondent No.2.

JAISHREE THAKUR, J. (Oral)

1. The instant petition has been filed under Section 482 Cr.P.C. seeking quashing of order dated 12.09.2016 passed by learned Sessions Judge, Hoshiarpur as well as order dated 28.07.2016 passed by learned Judicial Magistrate Ist Class, Hoshiarpur whereby, the application under Section 319 Cr.P.C. has been allowed, summoning the petitioners herein as additional accused.

2. In brief, the facts are that complainant-respondent No.2 got an FIR No.69 dated 17.07.2012 registered under Sections 406, 498-A of Indian Penal Code at Police Station Hoshiarpur against accused Gursewak Singh (husband), Amarjit Kaur (mother-in-law), Pavittar Singh (brother-in-law), Harjinder Kaur (sister-in-law) and Nirbair Singh (maternal uncle of her

husband) on allegations that she has been tortured for bringing inadequate dowry. The matter was investigated and report under Section 173 Cr.P.C. was prepared and submitted, in which Gursewak Singh, husband (since PO) Amarjit Kaur (mother-in-law) and Pavittar Singh (brother-in-law) have been challaned and both the petitioners herein have been found as innocent. Thereafter, statement of complainant-Sukhjit Kaur was recorded as PW1, in which she reiterated the allegations of demand for dowry by her husband and mother-in-law and allegations were also made against brother-in-law Pavittar Singh of giving her a leg blow in her stomach, leading to a miscarriage. It was deposed that the maltreatment meted out to her was given at the instigation of her husband Gurmukh Singh. She further deposed that *“all the accused were giving me beating whose names are Amarjit mother-in-law, Nanad Harjinder Kaur, father-in-law (Maama) Nirbhair Singh, Deor Pavittar Singh.”* She further stated that *“On dated 21.04.2011 they had given me beating and shunted me out of the house and had got my signatures on blank papers.”* The said statement was recorded partly and examination-in-chief was deferred to allow the State to file an application under Section 319 Cr.P.C., which application stood allowed by the JMIC by an order dated 28.07.2016, holding that the examination-in-chief of the complainant recorded in the court makes out a prima facie case against the accused persons namely Harjinder Kaur and Nirbhair Singh and the petitioners herein have been summoned to face trial. A revision petition filed against the said order too dismissed by the Additional Sessions Judge, Hoshiarpur.

3. Learned counsel appearing on behalf of the petitioners

contends that after investigation, the petitioners herein have been found innocent and accordingly had been kept in column No.2 in the challan that has been filed under Section 173 Cr.P.C. It is argued that there is no evidence available on the record to show the commission of any offence at the hands of the petitioners herein. It is further contended that petitioner No.1 herein is the maternal uncle of Gurmukh Singh, husband of the complainant, who is not joint in residence and is residing independent of the complainant and her husband, while further arguing that petitioner No.2 herein is the married sister-in-law of the complainant, who is residing separately in her own matrimonial home. In support of his arguments, learned counsel relied upon judgments rendered in **Hardeep Singh vs. State of Punjab and others, 2014(1) RCR (Criminal) 623, Babubhai Bhimabhai Bokhiria and another vs. State of Gujarat and others, 2014 (2) RCR (Criminal) 915, Michael Machado and another vs. Central Bureau of Investigation and another, 2000(2) RCR (Criminal) 75 and Chander and another vs. State of Haryana, 2015(3) RCR (Criminal) 764.**

4. Per contra, learned counsel appearing on behalf of the respondent-State and complainant urge that there is no infirmity in the order so passed, while submitting that in the FIR there are specific allegations that the petitioners herein along with other accused persons maltreated the complainant, on account of lack of dowry.

5. I have heard learned counsel for the parties, apart from perusing the record.

6. The law is now well settled as regards summoning a person as

an additional accused under Section 319 Cr.P.C. The power to summon a person as an additional accused is undisputed, but the same has to be exercised sparingly, with caution, and to be exercised in order to ensure that the culprit does not get away. ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92*** the Constitution bench of the Supreme Court held:

“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."(emphasis supplied).

7. The Supreme Court, in **Brijendra Singh and others vs State of Rajasthan supra** while summing up the ratio as laid down in **Hardeep Singh's case (supra)** held:

"Power under Section 319 Cr.P.C. can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some 'evidence' against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The 'evidence' herein means the material that is brought before the Court during trial. Insofar as the material/ evidence collected by the IO at the stage of inquiry is concerned, it can be utilized for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross- examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom chargesheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such

power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.”

8. In the case in hand, an investigation was conducted by the ACP Ludhiana and report under Section 173 Cr.P.C. was presented only against Gursewak Singh (husband), Amarjit Kaur (mother-in-law) and Pavittar Singh (brother-in-law), as investigation revealed that there was a demand of dowry and maltreatment. The petitioners herein were found innocent and kept in column No 2. A reading of the initial statement of the complainant recorded before the police, reflects that a general allegation has been made that petitioners herein Nirbair Singh (uncle-in-law) and Harjinder Kaur (sister-in-law) taunted her for bringing inadequate dowry and also used to beat her. A similar statement has been recorded during trial to rope in the uncle-in-law and sister in law. During the investigation, it was found out that the petitioners herein were residing separately. No evidence/material, other than the statement of the complainant, has been brought before the court to warrant summoning of petitioners as additional accused to stand trial.

9. It has been categorically been held in **Hardeep Singh's case (supra)** *“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.”* and a similar view in **Brijendra Singh's case (supra)** *“The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.”* Both the courts

below have summoned the petitioners as additional accused on an application filed under Section 319 primarily on the ground that a *prima facie* case is made out, when there is no material evidence available to do so other than the statement made. Both the petitioners reside separately and cannot be said to have a great influence over the day to day matrimonial life of the complainant. As has been held by the Supreme Court, to summon an accused under section 319 Cr.P.C., the evidence that has to be looked into is such, that if goes un rebutted, would lead to a conviction. The same is lacking in the instant case.

10. Therefore, finding merit in the arguments so raised, the instant criminal miscellaneous petition stands allowed and the impugned orders summoning the petitioners as additional accused are hereby set aside.

11. Anything observed or said by this court hereinabove, shall have no affect on the merits of the case.

May 23, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No