

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

Crl. Misc. M-41092 of 2018 (O&M)
Date of Decision: November 28, 2018

Shikha Mahajan @ Nidhi Mahajan

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Vinod K. Kaushal, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

1. This is a petition that has been filed seeking to challenge the order dated 05.07.2018 passed by the learned Addl. Sessions Judge, Amritsar whereby the revision petition filed by the petitioner, challenging the order dated 24.10.2017 passed by the trial court, has been dismissed as well as order dated 24.10.2017 passed by the Ld. Judicial Magistrate Ist Class, Amritsar whereby the application filed by the petitioner under Section 319 Cr.P.C. has been dismissed.

2. In short, the facts of the case are that, a marriage was solemnized between the petitioner-complainant and respondent No.2-Sumit Mahajan on 06.08.2008 according to Hindu rites and ceremonies, which marriage did not survive the test of time and resulted in registration of FIR No.349 dated 19.09.2014, under Section 498-A of Indian Penal Code at

Police Station A-Division, Amritsar on the allegations of harassment and maltreatment on account of demand of dowry. After investigation, challan was presented by the investigating agency only against respondent No.2-Sumit Mahajan (husband) whereas, mother-in-law Neelam Mahajan and sister-in-law Seema Mahajan were kept in column No.2. Thereafter, charges were framed and the petitioner-complainant was examined, in which she levelled specific allegations against mother-in-law Neelam Mahajan and sister-in-law Seema Mahajan. Subsequently, an application under Section 319 Cr.P.C. has been moved by the prosecution for summoning respondent No.3-Neelam Mahajan (mother-in-law) and respondent No.4-Seema Mahajan (sister-in-law), which application was dismissed by the trial court. Revision filed against the order of the trial court also came to be dismissed. Both the said orders are under challenge in this petition.

3. Learned counsel appearing on behalf of the petitioner herein contends that the trial court has dismissed the application moved under Section 319 Cr.P.C. for summoning of respondents No.3 and 4 herein as additional accused without appreciating the evidence of the prosecution that they have been specifically named by the petitioner-complainant in her statement as well as in the FIR.

4. I have heard learned counsel for the petitioner and have also gone through the pleadings of the case.

5. The learned trial court, while dismissing the application of the petitioner-complainant moved under Section 319 Cr.P.C. has observed that the principal allegation of cruelty with complainant on account of bringing

less dowry is specifically attributed to husband only as against the proposed accused. There are general and omnibus allegations which do not satisfy the court that these accused should be directed to be summoned for facing trial as additional accused. The trial court has further observed that the complainant has not stated any specific instance during her examination-in-chief as well as during her cross-examination which alleges that the mother-in-law and sister-in-law have caused cruelty upon the complainant with a view to force her to meet the unlawful demand of any property or valuable security.

6. Further, the learned Revisional Court, while dismissing the revision of the petitioner, has observed as under:

“9. xxx xxx xxx It is settled position of law that the court while summoning an additional accused under Section 319 Cr.P.C., has to satisfy itself that sufficient ground exists against such accused to summon him for facing trial. The satisfaction as required under law is more than that of a prima facie case and less than that of the satisfaction that evidence is sufficient for conviction of accused. The careful evaluation of the material leads this court to infer that the allegations against the respondents No.2 and 3 even in the original complaint are vague, unspecific and not sufficient to infer the culpability of the respondents number 2 and 3 on that basis. This conclusion is further supported by the report of enquiry which is also to be looked into being a material available before court to properly exercise its jurisdiction under Section 319 Cr.P.C. The report of enquiry clearly reveals that the respondents were found innocent after thorough enquiry and challan was accordingly not presented

against them. Through her statement recorded in the court the complainant has reiterated her original allegations, which were once tested during enquiry for their truthfulness. It was found during inquiry that the complainant resided with her husband in a separate accommodation for most of the time except initial one year of her marriage which was considered one of the grounds to exonerate the respondents No.2 & 3 from the allegations. It is not a case where some fresh material has been brought before the court except the old version put forth by the complainant so as to justify any other inference except the one, drawn by the trial court. Findings recorded by the trial court in the impugned order clearly reveals the proper appreciation of evidence and material before it which resulted into dismissal of the application of petitioner under Section 319 Cr.P.C.”

7. 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. In this regard, reliance can be placed upon judgments rendered in ***Hardeep Singh vs. State of Punjab and others, 2014 (1) R.C.R. (Criminal) 623 and Barjinder Singh vs. State of Rajasthan, (2017) 7 SCC 706***.

8. In the case in hand, the allegations of harassment and maltreatment on account of demand of dowry, as raised by the petitioner-complainant in the FIR against respondents No.3 and 4, were found to be false and they were kept in column No.2. Thereafter, she raised similar allegations against respondents No.3 and 4 during the course of her

statement recorded before the trial court and sought summoning of both of them as an additional accused under Section 319 Cr.P.C. During the course of inquiry, it was found that the complainant resided with her husband in a separate accommodation for most of the time except initial one year of her marriage. No fresh material has been produced before the courts below, so as to justify summoning of respondents No.3 and 4 as an additional accused. This court finds nothing wrong in the impugned orders so passed by the courts below.

9. In view of the above, the petition in hand is hereby dismissed, being devoid of any merits.

November 28, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No