

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

Crl. Revision No.1747 of 2015(O&M)
Date of Decision: February 6, 2018

Rajeev Sharma

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Abhijeet Partap Singh Chaudhary, Advocate
for the petitioner.

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

Mr. Jagdeep Singh Bajwa, Advocate for
Mr. G.B.S. Dhillon, Advocate
for respondents No.2 and 3.

JAISHREE THAKUR, J. (Oral)

The instant criminal revision has been filed seeking to challenge impugned order dated 23.03.2015 passed by the Additional Sessions Judge, Ludhiana, in Sessions Case No. 121 of 10.12.2014 in FIR No.197 dated 13.07.2014, under Sections 304-B of Indian Penal Code, registered at Police Station Basti Jodehwal, Ludhiana, in which application under Section 319 Cr.P.C, seeking to summon respondent No. 2 and 3 as additional accused, has been dismissed.

2. In brief, the facts are that Mamta (since deceased) the real sister of the petitioner was married to Sandeep Kumar on 26.01.2014 as per Hindu

rites and rituals. They were married for a short duration i.e. for a period of six months when Mamta died in her matrimonial home. FIR No.197 dated 13.07.2014 under Section 304-B IPC came to be registered at the behest of her brother Rajeev Sharma. In the said FIR, it was stated that Mamta's in-laws were given adequate dowry, however, they were not satisfied with the same. After a few days of marriage, they received a call from Mamta that her in-laws were taunting her that the marriage was not performed according to the in-laws financial status. After some time, the son-in-law started demanding a sum of Rs.5 lakhs to help him increase his business. On 27.02.2014, when his sister Mamta came to meet the family, she narrated that her in-laws family i.e husband Sonu alias Sandeep Kumar, mother-in-law Mamta Rani, brother-in-law Mandeep Kumar, sister-in-law Neetu and father-in-law Vijay Kumar kept on taunting her to bring dowry and also used to physically abuse her. On 15th May 2014, there was a wedding in the family and the entire in-laws family of Mamta Rani were invited, but only Mamta Rani was sent to attend the wedding. Thereafter, no one came to take her back despite his sister calling her husband and mother-in-law to do so. She was categorically told that a sum of Rs.5 lakhs should be given before she could be taken back. The brother-in-law Mandeep Kumar and his wife, who is also from Amritsar, came and took his sister Mamta Rani back to her matrimonial home. A few days later i.e. on 1st June 2014, the complainant went to Amritsar and gave Rs. 50,000/- to Sandeep Kumar. Later they were informed of the death of Mamta in her matrimonial home. Complainant alleged that the death of his sister was due to the harassment and torture given to her by her husband and in-laws family on account of demand of

dowry, she died by hanging herself from the fan.

3. On the registration of the FIR, the matter was investigated and respondents No. 2 and 3 namely Mandeep Kumar brother-in-law and Neetu were found innocent and were placed in column No. 2 by the police in the report furnished under Section 173 Cr.P.C. The complainant recorded a statement wherein he alleged that Mandeep Kumar and Neetu were demanding dowry from his sister Mamta and were also mentally torturing and harassing her. He further stated that Mandeep Kumar respondent No.2 and Neetu respondent No. 3 along with co-accused caused dowry death of his sister Mamta. Cross-examination was subsequently deferred and an application under section 319 Cr.P.C was filed by the prosecution. The matter was heard and the application was dismissed relying upon the enquiry conducted by ACP Ludhiana, which had taken into consideration the fact that Mandeep Kumar and his wife were residing separately, on two different floors. The Additional Sessions Judge also came to the conclusion that there was no occasion for Mandeep Kumar and Neetu to raise demand of Rs. 5 lakhs from deceased Mamta for expansion of business of Sandeep Kumar as they would not be a beneficiary in the expansion of the said business. Aggrieved against the order dismissing application under section 319 CR.P.C., the instant revision petition has been preferred.

4. Ld. counsel appearing on behalf of the petitioner contends that there was a categorical averment made at the time of registration of the FIR that Mandeep Kumar brother-in-law of the deceased Mamta, and his wife Neetu were demanding a sum of Rs. 5 lakhs and therefore, they ought to have been summoned to face trial.

5. Per contra, Mr. Jagdeep Singh Bajwa, learned counsel appearing on behalf of the private respondents argues that they are no specific allegations of demand of dowry qua the respondents. In fact, the demand if any, is against the husband and his parents. It is also submitted that the sum demanded was for the expansion of the business of Sandeep Kumar and a sum of Rs 50,000/- was handed over to husband of the deceased. Reliance is placed upon a judgment 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*** to argue that without any substantial evidence, summoning under Section 319 Cr.P.C. would be wholly unsustainable. It is submitted that the test as laid down in ***Harpdeep Singh's case (supra)*** before the Courts summon a person as an additional accused is that there has to be strong evidence available, other than more probability.

6. I have heard learned counsel for the parties and with their assistance have pursued the case file.

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 ***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 unrebutted, 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).*

8. 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."

9. 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 the husband Sandeep Kumar, mother in law Mamta Rani and father in law Vijay Kumar, as investigation revealed that there was a demand of dowry. The respondents 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 present respondents i.e. brother-in-law Mandeep Kumar and sister-in-law Neetu, taunted her for bringing inadequate dowry and also used to beat her. It is only thereafter that an improvement was made in the statement recorded under Section 164 Cr.P.C. during trial to rope in the brother-in-law and his wife. During the investigation it was found out that the respondents herein were residing separately, even though it was on a separate floor in the same house, but the working hours were separate as one worked in the morning shift and the other in the evening. No evidence/ material, other than the statement of the complainant, has been brought before the court to warrant summoning of the respondents as accused to stand trial. 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 unrebutted, it would lead to a conviction. The same is lacking in the instant case.

10. Another factor that cannot be lost sight of is that the petitioner has clearly mentioned that he handed over a sum of Rs 50,000/- to Sandeep Kumar the husband, towards a demand raised for Rs.5,00,000/-. This demand was for expansion of a business, which would not have benefitted the respondents as they were not in joint business.

11. There is no infirmity in the order of the Additional Sessions Judge, who noticed that the statement made by the petitioner is an improvement to rope in the respondents. The petitioner had preferred an application under Section 193 Cr.P.C. to summon the respondents before framing of charges, which was dismissed holding that there is no material evidence available and no specific demand of dowry by Mandeep Kumar

and Neetu. It is only thereafter that the statement was made in court that the respondents had raised a demand of dowry.

12. Therefore in view of the foregoing discussion and ratio of law, the instant criminal revision is hereby dismissed, being devoid of any merits.

February 6, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No