

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

CRR-2453 of 2015 (O&M)

Date of Decision: JULY 24, 2018

Om Parkash @ Omi and others

...Petitioners

Versus

State of Punjab

Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. S.S.Bhinder, Advocate
for the petitioners.

Ms. Rajni Gupta, Sr. DAG, Punjab

JAISHREE THAKUR, J. (Oral)

In the instant petition, the petitioners herein seek to challenge the order dated 13.05.2015 passed by Additional Sessions Judge, Bathinda vide which the petitioners have been summoned under Section 319 of the Code of Criminal Procedure (hereinafter referred as Cr.P.C.) to face trial in FIR No. 151 of 02.09.2013 under Section 304-B IPC registered at Police Station Canal Colony, District Bathinda.

In brief, the facts of the case are that marriage between Neeru and Vinod Kumar was solemnized six years prior to the date of death of the Neeru (deceased) and out of this wedlock two children were born. The daughter of the complainant committed suicide, which resulted in the lodging of the aforesaid FIR, on the allegations that she had been harassed for bringing less dowry and this harassment was started from the very date

of her marriage. It was alleged that a Panchayat had also been convened to make the husband and his family members understand to not to harass her but the same was relentless. The matter was investigated and final report was submitted holding the petitioners herein to be innocent and kept their names in column no. 2. It is thereafter that the complainant-Shyam Lal moved an application under Section 319 Cr.P.C. seeking to summon the petitioners herein.

Mr. S.S. Bhinder, learned counsel for the petitioners herein, seeks to challenge the said order by arguing that the matter had been investigated thoroughly and thereafter a report under Section 173 Cr.P.C. was presented only against Vinod Kumar, husband of the deceased. It is also submitted that the marriage between the parties had been solemnized a few years ago and till the time the daughter of the complainant committed suicide, there were no such allegations of demand of dowry and, in fact, two children were born out of this wedlock.

Learned counsel for the petitioners also submits that the matter between the parties was a simple affair and there was no demand of dowry and no material available on the record other than the application and the statement given by the complainant. It is also submitted that it is an admitted fact that the deceased and her husband were having separate mess and separate residence and, therefore, question of subjecting her to cruelty by the petitioners herein would not arise, while also arguing that it is available on the record in form of cross-examination of the complainant that the marriage was a simple affair. It is argued that a reading of the impugned order would reflect that the Additional Sessions Judge, Bathinda, while summoning the petitioners, has done so on suspicion only and,

therefore, the said order is not sustainable.

Learned counsel on behalf of respondent-State submits that the petitioners herein are close family members of the husband of the deceased and are closely related to the deceased and, therefore, have rightly been summoned to face trial under Section 319 Cr.P.C considering the fact that the deceased committed suicide while being in her matrimonial home.

It is also argued that it has come in the cross-examination that the petitioners and the deceased along with her husband were residing in a common area which was adjacent to each other. It is also argued that the death took place within seven years of the marriage and, therefore, the petitioners have rightly been summoned to face trial.

I have heard the learned counsels for the parties and also perused the pleadings on the record.

Admittedly, an FIR came to be registered by Shyam Lal, the complainant on 02.09.2013 alleging that his daughter had committed suicide at her matrimonial home. It was alleged that on 01.09.2013 his daughter rang him up and said that her husband, mother-in-law, father-in-law and brother-in-law are harassing her for bringing less dowry and were beating her up for demand of Rs.30,000 as dowry for a domestic use. It was on this account that she committed suicide. The matter was thoroughly investigated and a challan was put up only against the husband Vinod Kumar whereas the petitioners herein i.e. father-in-law, mother-in-law and brother-in-law (Devar) of the deceased were found to be innocent and falsely implicated and, therefore, kept in column No. 2

A reading of the cross-examination, which is annexed as PW-1 on the record, would reveal that the complainant had not made any

complaint to the Police regarding demand of dowry on an earlier occasion while he could not tell the exact time, date, month and year, when his daughter had been harassed and maltreated and given beatings in connection with demand of dowry. Furthermore, the cross-examination would also reveal that the complainant could not tell the date, month and year as to when the demand of Rs. 30,000 was made. Moreover, he was not in a position to tell whether the children (born out of the wedlock) were going to any Pre-nursery School or not. The cross-examination further reflects that the deceased and her husband were residing separately from the petitioners herein, having separate mess and separate ration cards had been issued in their names. Further, it is an admission made that the marriages in their community are solemnized in a simple manner and the question of demand of dowry does not arise, while further admitting that at the time of marriage only 'Shagun' and gifts were given and not dowry articles. Furthermore, the complainant was not able to disclose who was looking after the minor children.

The law as laid down regarding summoning of additional accused under Section 319 Cr.P.C. is well settled in judgment rendered by the Constitutional Bench in **Hardeep Singh Vs. State of Punjab, 2014 Vol.III, SCC-92**. The legal position with regard to exercise of power under Section 319 Cr.P.C. has been held to be a discretionary and an extraordinary power which is to be used and exercised sparingly, with caution, and to be exercised only in those cases where the circumstances of the case so warrant. The said power is to be exercised only when strong and cogent evidence found against a person from the evidence led before the Court that such power should be exercised. Relevant part of the judgment is

reproduced below:-

“105. Power under Section 319 Cr.P.C. 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).*

Furthermore, in a recent judgment, reported as **Brijendra Singh and others vs State of Rajasthan (supra) (2017) 7 SCC 706**, the Supreme Court, while summing up the ratio as laid down in **Hardeeps Singh's case (supra)**, held as under:-

Para 13

*“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. In so far 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 charge-sheet 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.”

In the case in hand, an investigation was conducted and report under Section 173 Cr.P.C. was presented only against the husband- Vinod Kumar while excluding all others from the said charges. In the statement that has been recorded before the Court, there is a clear cut admission that the marriage was simple one, without any dowry given and there were only 'Shagun' and gifts given as per their custom.

Once the evidence does not reflect that there was any harassment on the part of the petitioners herein, which could have resulted in the suicide of the daughter of the complainant, summoning of the petitioners herein as accused to stand trial is wholly unwarranted. 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 be such if it goes un-rebutted and which would lead to a conviction. Such evidence is lacking in the instant case. Moreover, apart from lack of any evidence available on the

record, the Additional Sessions Judge, Bathinda has proceeded to summon the petitioners herein on mere suspicion, which clearly is unsustainable.

Therefore, for the reasons aforesaid, the present revision is allowed and the impugned order passed by learned Addl. Sessions Judge Bathinda is set aside.

JULY 24 , 2018

seema

(JAISHREE THAKUR)

JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No