

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

Crl. Revision No. 2140 of 2016(O&M)

Date of Decision: 18.04.2018

Kashmir Kaur & Anr.

.. Petitioners

Vs.

State of Punjab & Anr.

.. Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. D.S. Pheruman, Advocate
for the petitioners.**

Mr. Pawan Sharda, SR. DAG Punjab.

**Mr. G.S. Simble, Advocate
for respondent No.2-complainant.**

ANITA CHAUDHRY, J.

The petitioners have assailed the order dated 03.05.2016 passed by the Addl. Sessions Judge, Gurdaspur. They have been summoned as additional accused to face trial with co-accused Surjit Singh.

The facts necessary for the disposal of the instant petition are noticed first.

Rajwinder Kaur (since deceased) was married to Surjit Singh on 12.04.2015. Petitioners Kashmir Kaur and Ranjit Singh are the mother and brother respectively of Surjit Singh. On 04.08.2015 Rajwinder Kaur was found dead in her matrimonial home. She died of poisoning. Her father-respondent No.2 Kashmir Singh made statement Ex.PA before the police and alleged that Rajwinder Kaur visited her parental home and had

disclosed that her husband Surjit Singh, mother-in-law Kashmir Kaur and brother-in-law Ranjit Singh maltreated her and she was beaten for bringing less dowry. On 03.08.2015 she again made a complaint against her in-laws about maltreatment. She was made to understand and was sent back to the matrimonial home. It was alleged that on 04.08.2015 she committed suicide due to maltreatment at the hands of her husband, mother-in-law and brother-in-law.

On the basis of statement Ex.PA, FIR No. 47 dated 04.08.2015 was registered under Section 304-B IPC at Police Station Rangar Kalan,

The police filed challan against the husband Surjit Singh only while the complicity of the petitioners was not found. Their names were kept in column No.2 of the challan.

Charge under Section 304-B IPC and in the alternative under Section 302 IPC was framed against Surjit Singh.

At the trial, complainant Kashmir Singh appeared as PW1. An application under Section 319 Cr.P.C. was filed seeking summoning of Kashmir Kaur and Ranjit Singh as additional accused. As noticed above, the application was allowed vide order dated 03.05.2016, which has been impugned by the petitioners in the instant revision petition.

I have heard learned counsel for the parties and have gone through the paper-book carefully.

Learned counsel for the petitioners had submitted that after detailed investigations, the involvement of the petitioners was not found in the report Annexure P-2 submitted by the police. According to him, the complainant as PW1 had only reiterated the allegations of the FIR which were found incorrect so far as the present petitioners are concerned and in

the absence of any new evidence/ material on record, the trial Court has erred in summoning the petitioners. Reliance was placed upon **Brijendra Singh & Ors. Vs. State of Rajasthan, 2017(3) RCR(Crl.) 374** and **Hardeep Singh Vs. State of Punjab & Ors. 2014(3) SCC 92** to contend that there was no nothing on record which warrants the summoning of the petitioners as additional accused.

The learned State counsel does not dispute that the petitioners were found innocent during investigation but supported the order. According to learned counsel for the complainant there were specific allegations against the petitioners in the FIR as well as in the deposition made by the complainant in the Court as PW1 and the trial Court has rightly relied upon it and had summoned the petitioners.

In **Hardeep Singh's case (supra)**, the Hon'ble Apex Court deliberated on the issue regarding the powers under Section 319 Cr.P.C. Dealing with the question regarding degree of satisfaction required for invoking the power under Section 319 Cr.P.C., numerous judgments were taken into account and it was observed:-

98. 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.

99. 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 Cr.P.C. In Section 319 Cr.P.C. 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 Cr.P.C. to form any opinion as to the guilt of the accused."

It is apparent that for the purpose of forming an opinion to summon an additional accused, the Court must be satisfied that there exists an extra ordinary case for exercise of jurisdiction. The case in hands needs to be analyzed in view of the law laid down referred to above.

Complete copy of challan was placed on record. Record shows that at the time of lodging FIR, the complainant named the petitioners, but the allegations were in general terms that they harassed her for bringing less dowry and due to the harassment by the in-laws Rajwinder Kaur committed suicide. Investigation was carried out and it was concluded by the DSP (Investigation) vide report Annexure P-2 that the petitioners were not instrumental in the death of Rajwinder Kaur. The operative part of the report reads as under:-

“From my entire inquiry, it has been found that the marriage of deceased Rajwinder Kaur was solemnized on 12.04.2015 at Gurdwara Acchal Sahib in a simple manner with Surjit Singh son of Hardev Singh, Caste Jat, resident of Sandalpur and no exchange of dowry was found in the marriage. The present marriage was second marriage of Surjit Singh and it was fourth marriage of Rajwinder Kaur. After the marriage Rajwinder Kaur and her husband Surjit Singh used to live separately with rest of the family and brother-in-law of Rajwinder Kaur and her mother-in-law Kashmir Kaur used to live separately in a house having the common courtyard. Nothing has come into surface with regard to dispute of bringing less dowry after the marriage and as per the statement and reply given by the complainant, Rajwinder Kaur did not state to her father that her in-law family used to harass her. Rajwinder Kaur compelled her husband Surjit Singh to sell the land after partitioning the same because of that there was some differences between husband and wife and because of that Rajwinder Kaur has committed suicide after consuming some poisonous substance. In the entire matter, there is no role of Kashmir Kaur and Ranjit Singh. I declare them innocent in the case. If approved, SHO, P.S. Rangar Nangal be directed to declare Kashmir Kaur wife of Hardev Singh and Ranjit Singh son of Hardev Singh resident of Sandalpur as innocent and after completing the investigation submit the challan in the Court.”

The report was approved by the Senior Superintendent of Police, Batala.

The complainant appearing in the witness-box reiterated the allegations of the FIR but nothing new was brought on record. Much more

in the shape of strong evidence was required to be led to prove the complicity of the petitioners in the offence, as has been held in Brijendra's case (supra). The statement of the complainant(PW1) reveals that it was the fourth marriage of the deceased, the first husband had died in a road side accident while the second marriage lasted only a month and was dissolved by the Panchayat as there were demand of dowry and harassment. After her third marriage, the deceased lived with the husband for about one month and this time also there were dowry demands. The fate of third marriage was not brought on record. It was the fourth marriage of the deceased with Surjit Singh. She had only lived for about four months and thereafter committed suicide. During the period interregnum, no complaint was made either with the Panchayat or to the police about the harassment by the deceased. It was not disputed that it was a simple marriage and the police found that no dowry was given. The allegation of complainant about harassment of deceased by the petitioners for bringing less dowry was found incorrect. No one had mentioned as to what was demanded. No new facts or material was brought on record by the complainant. The petitioners were found to be residing separately. The complainant had admitted that her daughter was of sensitive nature. The deceased was 28 years old and this was her fourth marriage. The complainant was required to explain what when wrong with her earlier marriages. The complainant did not disclose this fact in the FIR.

In Brijendra Singh's case (supra) in similar situation the trial Court had relied upon the statement of complainant and other witnesses to summon the additional accused, which was not different than the statements recorded under Section 161 Cr.P.C. and was disbelieved to the extent of the persons sought to be summoned therein, the order was set aside and it was

held as under:-

“This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so- called verbal/ocular version. Thus, the ‘evidence’ recorded during trial was nothing more than the statements which was already there under [Section 161](#) Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether ‘much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny.”

In ***Krishnappa v. State of Karnataka, 2004 (4) RCR (Criminal) 678***, the Court ruled that the power to summon an accused is an extraordinary power conferred on the Court and it should be used very sparingly and only if compelling reasons exist for taking cognizance against the person other than the accused.

The Apex Court in *Sarabjit Singh and another v. State of Punjab and another* reported as 2009(3) RCR (Criminal) 388 observed as follows:-

“17. The provision of Section 319 of the Code, on a plain reading, provides that such an extraordinary case has been made out must appear to the court. Has the criterion laid down by this Court in Municipal Corporation of Delhi (supra) been satisfied is the question? Indisputably, before an additional accused can be summoned for standing trial, the nature of the evidence should be such which would make out grounds for exercise of extraordinary power. The materials brought before the court must also be such which would satisfy the court that it is one of those cases where its jurisdiction should be exercised sparingly. We may notice that in Y. Saraba Reddy v. Puthur Rami Reddy and Anr. [JT 2007 (6) SC 460], this Court opined:

"...Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates that evidence of witnesses given in Court..."

Similar view has been reiterated in the cases of **Asha Rani Vs. State of Punjab** 2014(7) RCR(Crl.) 238, **Suman Ashok Kumar Vs. State of Punjab** 2012(4) CCR 115, **Dalpreet Singh & Ors. Vs. State of Punjab & Ors.** 2012(6) RCR(Crl.) 2315 and **Sukkh Raldas & Ors. Vs. State of U.P. & Anr.** 2011(6) RCR(Crl.) 2582.

In the considered opinion of this Court, the trial Court had erred in summoning the petitioners while exercising the powers under Section 319 Cr.P.C. Only because the complainant named the petitioners again, was not enough to prove their complicity. No new material had been produced on record by the complainant. The prima facie opinion which is to be formed requires stronger evidence than mere probability of the complicity of the petitioners.

In view of the above, the petition is allowed and the impugned order passed by the trial Court summoning the petitioners as additional accused is set aside.

It is made clear that this Court has evaluated the material on record so far as present petitioners are concerned and the observations made are without prejudice to the merits of the case qua accused Surjit Singh.

April 18, 2018
Jiten

(ANITA CHAUDHRY)
JUDGE

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No