

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

CRR No.1041 of 2017 (O&M)
Date of Decision: May 21, 2018

Champa Lal and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Sunil Chadha, Senior Advocate with
Mr. M.K. Arya, Advocate
for the petitioners.

Mrs. Anju Arora, Addl. AG Punjab.

Mr. A.P.S. Deol, Senior Advocate with
Mr. Shaktipal Singh Mann, Advocate
for the complainant.

JAISHREE THAKUR, J.

1. The instant criminal revision has been filed seeking to challenge the order dated 13.01.2017 passed by the Additional Sessions Judge, Ludhiana whereby, the application filed under Section 319 Cr.P.C. has been allowed and the petitioners herein have been summoned to face trial under Section 304-B read with Section 34 of Indian Penal Code.

2. In brief, the facts are that, an FIR No.130 dated 07.07.2015 came to be registered at Police Station Division No.4, Ludhiana under Sections 304-B, 34 of Indian Penal Code, on the statement given by Kahan Singh that his elder daughter Manju Raj Purohit was married to Jatinder

Singh son of Champa Lal for the last 5-6 years and at that time, he has given dowry as per his capacity. After some time of the marriage, the in-laws family of his daughter started demanding money and a car and used to harass his daughter. On account of the harassment suffered at the hands of the husband Jatinder Singh, father-in-law Champa Lal and mother-in-law Savita Devi, his daughter finished her life by hanging herself. After registration of the FIR, the matter was investigated and the petitioners herein were found innocent and kept in column No.2 and trial started only qua son of the petitioners namely Jatinder Singh.

3. During trial, statement of complainant Kahan Singh was recorded partly as PW1 on 16.02.2016, in which statement it was stated that on the very next day when his daughter reached her matrimonial home, her mother-in-law Savita Devi snatched her purse, containing shagun and 8-9 suits, which he had given to his daughter. The husband, his mother Savita Devi and his father Champa Lal told his daughter that her father has agricultural land and shop, but he has not given adequate money on the marriage and has not given a car. The complainant deposed that he expressed his inability to give them a car, but told that he would give cash after some time. However, as harassment continued she was brought to the parental home on 07.02.2015 where, she narrated about the cruelty meted out to her in her matrimonial home, on account of non-fulfilling their demand of cash and car. On 16.02.2015, a Panchayat was called and father-in-law of his daughter was also present where, the complainant expressed his inability to give a car. It was decided that he would give ₹ 2 lacs to the husband and in-laws, which he gave to Champa Lal, after withdrawing the

same from his account from Punjab National Bank, Bhadaur on 16.02.2015. Thereafter, Champa Lal took his daughter back to her matrimonial home, however, things did not improve. On 01.05.2015, accused husband Jatinder Singh and his parents gave severe beatings to his daughter, who in turn telephonically informed him about the same. He went to his daughter's matrimonial home and brought his daughter back with him. Another Panchayat was convened and the Panchayat prevailed upon Champa Lal to turn down his demands, upon which Champa Lal demanded a car for rehabilitating the girl. Thereafter, in the Panchayat, the complainant submitted that he had ₹ 1.30 lacs in his account and he would withdraw and give the same, which was done 11.05.2015, on which his daughter went back to her matrimonial home. Things remained normal for a short period of time, however, another demand was made. The husband of the deceased left his daughter in her parental home. Again a meeting was convened and Champa Lal came with a few persons and the complainant sent back his daughter to her matrimonial home. On 05.07.2015, a phone call was received by the complainant from his daughter that she has been subjected to beatings and on 06.07.2015, Champa Lal, petitioner No.1 herein made a phone call to him that his daughter has hanged herself. On reaching Ludhiana, they were not shown the dead body of the daughter and in the evening when the dead body was shifted from mortuary to DMC Hospital to Civil Hospital to Civil Hospital, Ludhiana for postmortem, he notices injury mark on the face and neck of his daughter.

4. Thereafter, Additional Public Prosecutor requested to defer the further examination-in-chief of PW1 Kahan Singh, complainant on the

ground that he wanted to place on record the account statements, CD and the writing regarding to which the witness had deposed in the court, which was allowed by the court on 16.02.2016. Thereafter, the complainant moved an application under Section 311 Cr.P.C. seeking permission to summon the witnesses and to place photographs of marriage of the deceased, bills of dowry articles and DVD prepared before postmortem of the deceased on the court file, which application came to be allowed on 12.09.2016. It is thereafter an application under Section 319 Cr.P.C. came to be filed for summoning the petitioners herein as additional accused, stating therein that not only there was entrustment of dowry articles to the accused under the FIR, the complainant has specifically levelled allegations against them in his statement regarding demand of cash by the petitioners and about handing over ₹ 2 lacs on 16.02.2015 and ₹ 1.30 lacs on 11.05.2015 to the petitioners herein. The application was decided and the Additional Sessions Judge, Ludhiana allowed the said application by taking into account that PW1 Kahan Singh had specifically reflected the name of the accused Champa Lal and Savita Devi. Aggrieved against the said order, the instant criminal revision came to be filed.

5. Learned Senior counsel appearing on behalf of the petitioners contends that the order passed by the trial court summoning the petitioners herein as additional accused suffers from various infirmities. It is submitted that the application under Section 319 Cr.P.C. has been decided by the trial court, even when examination-in-chief of the complainant was mid-way and had not been completed. It is stated that the court has relied upon contents of the FIR, representation dated 20.07.2015 and account statement of the

bank when as a matter of fact neither the application dated 20.07.2015 is a part of neither testimony of the complainant nor the statement of the bank. It is further submitted that in para 6 of the order, it has been mentioned that the complainant has stated that he handed over ₹ 2 lacs on 16.02.2015 and ` 1,30,000/- on 11.05.2015 to Champa Lal and Savita Devi on their demand. To prove this fact, the complainant has summoned the witness from the bank who duly proved the account statement of the complainant and entries to this effect are on record. It is urged that besides testimony of the complainant recorded partly, no other witness was examined by the prosecution before application under Section 319 Cr.P.C. was decided. It is further argued that the trial court after referring to various arguments raised by counsel for the complainant in para 5 onwards and thereafter, referring to the judgments cited in support of the application, has passed the order summoning the petitioners even without adverting to the standard of satisfaction required to be recorded by the court for summoning an additional accused, which should be more than that of a prima facie case or may be less than sufficient to record conviction of the additional accused. It is also contended that the alleged representation dated 20.07.2015 submitted by the complainant has been attached with the supplementary challan filed against the petitioners herein, but the same has not been relied upon in any manner by the prosecution. It is vehemently argued that the petitioners herein have been summoned on the basis of the statement of the complainant wherein, he has made serious improvisation, after due deliberation from his earlier statement, which was made the basis of the FIR. It is also contended that the investigating agency submitted the

cancellation report against the petitioners after taking into consideration the messages, which were found in the mobile phone of the deceased Manju and as per the said messages, the deceased was found to be in an affair with a boy and because of which reason, the deceased remained at her parental home for 83 days during a short span for five months and eight days marriage. It is further submitted that the without holding as to how the judgments cited by counsel appearing on behalf of the co-accused are not applicable to the facts of the case in hand, they have been brushed aside. In support of his arguments, learned Senior counsel relied upon **Hardeep Singh vs. State of Punjab and others, 2014(1) RCR (Criminal) 623, Jai Singh vs. State of Haryana and others, 2016(2) Law Herald 1459, Harbans Lal vs. Manohar Lal and others, 2004(4) RCR (Criminal) 430, Sukhbir Singh @ Billa and others vs. State of Punjab, 2015(8) RCR (Criminal) 79.**

6. Per contra, learned Senior counsel appearing on behalf of the complainant argues that in the statement on the basis of which the instant FIR was registered, the complainant has raised the allegations not only against son of the petitioners, but also against the members of the in-laws family, in which it is specifically mentioned by the complainant that husband of the deceased and other member of the in-laws family have started maltreating the deceased for bringing more dowry articles, money and car and due to the atrocities committed by all the family members of the deceased, she ended her life. It is argued that as the deceased committed suicide within five months of the marriage, the complainant could not disclose all the detailed facts to the police at the time of registration of the

FIR, but immediately on 20.07.2015, he moved an application to the Commissioner of Police, Ludhiana disclosing all the detailed facts of demand of dowry etc. It is submitted that there is nothing on record to prove that the deceased was having love affair with some boy at her parental village. Learned Senior counsel also denied the factum of taking any friendly loan by the complainant from the petitioners. It is argued that in his examination-in-chief the complainant has specifically stated that he handed over cash on two different occasions to the accused persons on their demand. It is also argued that the impugned order passed by the trial court is well reasoned and no ground is made out to interfere with the same. In support of his arguments, learned Senior counsel for the complainant relies upon **Kaptan Singh vs. State of M.P., 1997(3) RCR (Criminal) 135, Vijender vs. State of Delhi, 1997(2) RCR (Criminal) 256, Dalip Singh vs. State of Punjab, 1997(4) RCR (Criminal) 58.**

7. I have heard learned counsel for the parties, apart from perusing the record and case laws cited.

8. The trial court, while passing the impugned order, made the following observations;

“13. After going through the arguments put-forward by the Ld. Addl. PP for the State assisted by Ld. Counsel for the applicant/complainant, the learned counsel for the accused and after going through the case-law cited by both the parties, this court is of the considered view that the statement of PW1 Kahan Singh, the complainant, is specifically reflecting the name of accused Champa Lal and Savita Devi even in the commission of the crime under Sections 304-B/34 IPC. As already discussed

above, the accused Champa Lal and Savita Devi along with the co-accused Jatinder Singh have specific role to play in the commission of the crime and both the accused sought to be summoned are also part of the gang. It is not to be considered at this stage while giving notice to the accused persons namely Champa Lal and Savita Devi that they have been placed on column no.2 when the challan was presented. The legislation intention enacting Section 319 of the Cr.P.C. was just regarding the fact that all the accused who appear to have committed the crime can be summoned by the court or by the counsel as per law. The authorities cited by learned counsel for the complainant are fully applicable to the facts and the circumstances of the case in hand. So, the application under Section 319 Cr.P.C. is hereby allowed and accused Champa Lal and Savita Devi are ordered to be summoned as additional accused for next date of hearing. Let notice of appearance be issued both the accused persons namely Champa Lal and Savita Devi to face trial under Sections 304-B/34 of the Indian Penal Code for 13.02.2017.”

9. The statement of complainant Kahan Singh as recorded before the trial court as PW1, reflects demands raised by the accused persons and fulfilling the said demands by giving of cash on two separate dates i.e ₹ 2 lacs on 16.02.2015 and ₹ 1,30,000/- on 11.05.2015. PW1 Kahan Singh, complainant, has also deposed as to how his daughter was being harassed by the accused persons, apart from convening the Panchayat number of times.

10. In a composite judgment pertaining to summoning of an accused under section 319 Cr.P.C, the Supreme Court in its judgment rendered by the Constitutional Bench in **Hardeep Singh vs. State of**

Punjab and others (supra) posed five questions for consideration of the court and answered the same, after discussing the various judgments on this point, which are as under;

“Question Nos.1 & III

Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND

Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 319 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused. Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the chargesheet.

In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No. II

Q.II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319 (4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. IV

Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No.V

Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh.”

11. Similarly in a judgment rendered in **Brijendra Singh vs State of Rajasthan, (2017) 7 SCC 706**, the Supreme Court has observed that the

degree of satisfaction to exercise power under Section 319 Cr.P.C to summon persons not arraigned as accused is more than the degree warranted at the time of framing of charges .

12. An argument has been raised that without completing the cross examination, the court has allowed the application under section 319 Cr.P.C. Firstly, this court notices that the examination-in-chief of complainant Kahan Singh recorded before the trial court as PW1 is still incomplete, which was deferred on the request of Addl. PP, who wanted to place on record the account statements, CD and the writing, regarding which PW1 deposed before the court. It is thereafter, an application came to be filed under Section 311 Cr.P.C. for summoning the concerned Clerk from Punjab National Bank, one goldsmith and one proprietor of a Furniture House, which application came to be allowed on 12.09.2016 and thereafter, an application under Section 319 Cr.P.C. came to be filed and the order passed on the said application is impugned in the instant criminal revision. In para 6 of the impugned order, while noticing the arguments raised by learned counsel for the complainant, the trial court has noticed that in order to prove that the complainant had handed over a sum of ₹ 2 lac and ₹ 1,30,000/- to the accused and *to prove this fact, the complainant has summoned the witness from the bank, who duly proved the account statement of the complainant and entries to this effect are on the record and learned counsel for the complainant referred to those bank statement.* However, it is not disputed that apart from the part statement of complainant recorded as PW1, no other witnesses has been examined. So, the impugned order passed by the trial court is also not sustainable on this

grounds, since till today no witness from the bank has come before the trial court, who has proved the account statement of the complainant.

13. One of the argument raised by learned Senior Counsel for the petitioners is that the trial court after noticing various arguments referred to, the petitioners have been summoned without recording any satisfactory reason for summoning the petitioners as additional accused, which should be based on evidence which is more than of a prima facie case. This court has gone through the impugned order passed by the trial court in which upto para 12, contentions of both the sides have been mentioned and in para 13, the trial court made its observations (para 13 of the impugned order already reproduced). Para 13 of the impugned order goes on to show that the trial court has not discussed or adverted to any of the arguments raised on behalf of the petitioners herein nor the case laws relied upon as well. In para 13, the trial court has stated that *“As already discussed above, the accused Champa Lal and Savita Devi along with the co-accused Jatinder Singh have specific role to play in the commission of the crime and both the accused sought to be summoned are also part of the gang.”* However, this court does not find any such discussion available in the impugned order. Moreover, in para 13 of the impugned order, the trial court has stated that *“The authorities cited by learned counsel for the complainant are fully applicable to the facts and the circumstances of the case in hand”* however, the trial court has said nothing about the case laws relied on behalf of the petitioners herein in the impugned order nor have any of the argument raised on behalf of the petitioners dealt with.

14. In Hardeep Singh's case(supra) the Apex Court has held that;

“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 unrebutted, 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.”

However, in the case in hand, the impugned order has been passed in a mechanical manner. Under these circumstances, it cannot be said that the impugned order passed by the trial court pass the test as laid down in **Hardeep Singh's case (supra)**.

15. In view of the foregoing discussion and ratio of law, the impugned order passed by the trial court suffers from various infirmities and is not sustainable on the grounds discussed above. As such, the matter is remanded to the the trial court with the direction to decide the application moved under Section 319 Cr.P.C. afresh, after considering the arguments so raised and the ratio of law laid down by the Hon'ble Supreme Court in **Hardeep Singh's case (supra)** as well as **Brijendra Singh vs State of**

Rajasthan (supra).

16. The criminal revision stands disposed of with the aforesaid directions and the matter should be decided afresh preferably within a period of two months from the date of receipt of certified copy of this order.

17. Needless to say, anything said or observed by this court hereinabove shall have no affect on the merits of the case, in any manner.

May 21, 2018*vijay saini***(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No