

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

CRR No. 1518 of 2017

DATE OF DECISION :- September 21, 2018

Karnail Singh and another

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE H.S. MADAN

Present:- Mr. Piyush Sharma, Advocate for the petitioners.

Mr. Rakeshinder Singh Sidhu, AAG, Punjab.

Mr. Varun Dhawan, Advocate for respondent no. 2.

This criminal revision petition is directed against the order dated 29.3.2017 passed by Additional Sessions Judge, Ferozepur vide which while exercising revisional jurisdiction, the petitioners have been summoned as additional accused allowing application under Section 319 Cr.P.C. while setting aside well reasoned order dated 27.8.2015 passed by the trial Court.

Briefly stated the facts of the case are that complainant Baljit Kaur had got registered F.I.R. No. 32 dated 24.3.2014 under Section 498-A IPC with Police Station Makhu on the allegations that at the time of her marriage with Ranbir Singh about 8-9 years earlier, her parents had given dowry articles beyond their capacity, however, her husband Ranbir Singh,

father-in-law Karnail Singh, mother-in-law Palwinder Kaur, sister in law Prabhjot Kaur, all residents of Village Dibwala, Police Station Makhu, Tehsil Zira, District Ferozepur were unhappy with the dowry brought by the complainant and they started harassing and maltreating the complainant in connection with demand of more dowry articles. She used to be given beatings even and while she was in family way she was turned out of the matrimonial home. She gave birth to a daughter namely Ramneek Kaur at her parental home. With great efforts by the parents of the complainant and other respectables, complainant could be rehabilitated in the matrimonial home. However, her maltreatment on account of demand of more dowry continued. The complainant gave birth to a son namely Abhijot Singh. However, there was no change in the attitude of the accused. The complainant was turned out of the matrimonial home; though later on the matter was compromised and the complainant along with her children returned to the matrimonial home. However, tale of her woes continued. Ultimately the complainant reported the matter to the police complaining against her harassment and maltreatment at the hands of the accused in connection with dowry and accused having committed criminal breach of trust with regard to her dowry articles. The matter was investigated. The local police did not find any merit in the allegations against the persons named in the F.I.R. except Ranbir Singh.

The challan has been filed in the Court against Ranbir Singh and the trial is proceeding, during the course of which an application under Section 319 Cr.P.C. was filed by the prosecution to summon Karnail Singh and his wife Palwinder Kaur as additional accused. That application was

dismissed by the trial Magistrate vide order dated 27.8.2015. Feeling aggrieved, the complainant had approached the Court of Sessions by way of filing a revision petition which was assigned to Additional Sessions Judge, Ferozepur, who vide order dated 29.3.2017 accepted the revision petition by setting aside the order passed by the trial Court and trial Court was directed to pass order in accordance with law clarifying that whatsoever had been observed or recorded in the order shall not have any impact on the merits of the main case. Now the persons sought to be summoned as additional accused have approached this court by way of filing the present criminal revision petition.

I have heard learned counsel for the petitioners, learned counsel for respondent no. 2 and learned State counsel besides going through the record.

The law on the subject has been summed up by a Constitutional Bench of the Apex Court in authority 'Hardeep Singh versus State of Punjab and others 2014(1) RCR (Criminal) 623'. Para nos. 98 and 99 of the judgment being relevant are reproduced as under :-

“98. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary 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 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.”

In that way the yardstick to be used for summoning of accused by the Court to summon additional accused under Section 319 Cr.P.C. is that evidence on record should be more than prima facie case as exercised at the time of framing of charge but short of satisfaction to an extent that such evidence if goes un rebutted would lead to conviction. In the present case the trial Court has adopted much rigorous test observing that it is settled law that power under Section 319 Cr.P.C. are exceptional in nature and must be

used sparingly when the Court is of the opinion that evidence on record is sufficient to convict the accused person. Though there is no dispute with the observations that power under Section 319 Cr.P.C. are exceptional in nature and must be used sparingly however such powers are to be used when there is more than prima facie case against the persons sought to be summoned as additional accused but short of satisfaction to the extent that if that evidence goes un rebutted that would lead to conviction.

Therefore, the Additional Sessions Judge was justified in setting aside the impugned order and directing the trial Court to pass fresh order in light of the settled law on the subject. The petitioners are getting alarmed unnecessarily. Learned Additional Sessions Judge has just directed the trial Court to pass fresh order with regard to application under Section 319 Cr.P.C. in accordance with law without being influenced by the observation made by him in the order. There is nothing wrong with issuance of such direction. There is no merit in the present petition, therefore, the same stands dismissed. Needless to say the observations made in this order shall not have any bearing on the final merits of the case.

**(H.S. MADAAN)
JUDGE**

September 21, 2018

p.singh

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No