

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-1298-2018 (O&M)

Date of decision: 20.09.2018

Sumita Sharma

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr.Vishal Munjal, Advocate for the petitioner.

Mr. Davinder Bir Singh, DAG, Punjab.

RAMENDRA JAIN, J. (ORAL)

Through this revision, challenge has been laid to the order dated 19.01.2018 of the trial Court whereby petitioner has been summoned under Section 319 Cr.P.C., to face trial as an additional accused.

Briefly, petitioner-Sumita Sharma was given in marriage to one Mukesh Kumar S/o Sukhdev Sharma, on 12.03.2009. Two children had born out of their wedlock in the years 2012 and 2013. On 20.03.2015, husband of the petitioner was found lying dead on railway track. The police after due investigation, finding it a case of suicidal death closed the case without lodging any FIR. However, after 01 year and 07 months, thereafter, on 19.10.2016 Naresh Kumar-complainant, who is none else, but brother-in-law of the petitioner got lodge FIR No. 50 dated 19.10.2016, under Section 306 IPC against her and her father.

During investigation, the petitioner was found innocent. Therefore, on completion of investigation, final report under Section 173(2) Cr.P.C. was filed only against father of the petitioner by placing her in column No. 2 as innocent. After framing of charge under Section 306 IPC against the father of petitioner, namely; Hardev Kumar, complainant-Naresh Kumar appeared as PW-1. Immediately thereafter, prosecution moved application under Section 319 Cr.P.C. for summoning of petitioner as an additional accused, which after hearing both the sides was allowed by the trial Court vide order dated 19.01.2018 impugned herein.

Learned counsel for the petitioner *inter alia* contends that trial Court has wrongly summoned the petitioner under Section 319 Cr.P.C., without appreciating the fact that PW-1 Naresh Kumar-complainant is not eye-witness to the suicidal death of husband of the petitioner. That apart, FIR was lodged by him after a huge gap of 01 year and 07 months. Entire story put forth by the complainant is concocted and false with *mala fide* and dishonest intention to grab the property of deceased husband of the petitioner, in view of the provisions of Section 25 of the Hindu Succession Act. The contents of FIR and deposition of complainant as PW-1 are completely hypothetical, imaginary and not corroborated by any material or documentary evidence. The police at the initial stage, immediately after the suicidal death of husband of the petitioner on thorough investigation closed the case finding it to be a case of suicidal death without taking any action against them. The petitioner has two children aged around 5 and 6 years of age to look after, upkeep

and maintain. Life of the petitioner has completely shattered due to suicidal death of her husband.

On the other hand, learned State counsel vehemently refuting the submission of learned counsel for the petitioner, pleaded the legality and validity of the impugned order.

Having given thoughtful consideration to the rival submissions made by learned counsel for the parties, this Court finds merit in the instant revision, for the reasons to follow:-

Deposition of complainant-Naresh Kumar, as PW-1 before the Court and his statement on the basis of which FIR has been lodged, are completely vague and hypothetical, in the absence of production of any calls record allegedly done by deceased-Mukesh Kumar to him, disclosing him that the petitioner and her father were pressurizing him to get the property transferred from his father to her name and further leasing out of the same to one Satnam Singh and sell another piece of land to the aforesaid lessee. There is no explanation on the file that as to why, the complainant remained silent for around 01 year and 07 months in lodging FIR. Lodging of FIR, after such a huge delay requires to draw adverse inference against PW-1 Naresh Kumar that out of sheer greed and with *mala fide* intention, he got lodged the FIR in question against the petitioner and her father.

During investigation of the FIR, the petitioner was found innocent. Therefore, her name was placed in column No. 2 of the final report under Section 173(2) Cr.P.C. No new evidence has been brought by the prosecution on record apart from the statement of complainant-

Naresh Kumar, before police which culminated into FIR to summon petitioner as an additional accused. Perusal of statement of Naresh Kumar as PW-1 and contents of FIR shows that they are almost verbatim. It is well settled that powers of the Court under Section 319 Cr.P.C. are extraordinary in nature and need to be used sparingly, if, some cogent and convincing evidence brought on record by the prosecution.

In view of discussion made above, the instant revision is allowed and the impugned order dated 19.01.2018 is set aside. The petitioner stands discharged.

September 20, 2018

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No