

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

**Crl. Revision No. 189 of 2018 (O&M)
Date of decision : 13.07.2018**

Ashok Kumar Jain and another

..... Petitioners

versus

Rachna and another

... Respondent

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Rajinder Goyal, Advocate
for the petitioner.

Mr. Karunesh Kaushal, Advocate
for respondent no.1.

Ms. Mahima Yashpal, AAG, Haryana.

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ANITA CHAUDHRY, J

The petitioners have assailed the order passed by the Additional Sessions Judge, Sirsa who summoned the additional accused while allowing the application filed under Section 319 Cr.P.C.

Shorn of un-necessary details, the facts giving rise to the FIR need to be reproduced first. Ankit was married to Rachna in February 2009. The same year they were blessed with a daughter in November and another child in January 2011 but during the stay together the complainant had been going back to her parent's and then returning to the matrimonial home after stay at her parent's house for about 3 – 4 months. Disputes arose and the matter was taken before the Panchayat. The allegations were that she was assaulted and given drugs which affected her mental condition. Threats of divorce were given. The girl ultimately returned to her parent's house. The

complainant had named the husband and the in-laws. The police investigated the matter and filed the challan only against the husband.

After the examination of the complainant an application was moved under Section 319 Cr.P.C., which was dismissed by the Magistrate who noticed that the father-in-law and the mother-in-law were living separately. It noted that the allegations against the additional persons sought to be summoned were false and the allegation that a car was demanded stood falsified as a new car had been purchased by the family by taking a loan and an affidavit had been given by the girl that they were living separately since 22.04.2011 and that she had no connection with her in-laws or their property.

The order passed by the Magistrate was challenged in revision before the Additional Sessions Judge who accepted the revision and set aside the order passed by the trial Court and ordered the summoning of the additional accused.

I have heard counsel of both the sides.

The submission on behalf of the petitioner is that the parents were residing separately and the complainant had admitted this fact in her affidavit. It was urged that vague allegations had been levelled making the same allegations against all the accused that she was beaten by the accused on 24.04.2014. It was urged that the complainant could not produce any new material to show their involvement and the Apex Court in ***Hardeep Singh Vs. State of Punjab and others (2014) 3 SCC 92*** has laid down the principles and the Additional Sessions Judge has passed summoning order only because the complainant had named them. It was urged that the Constitution Bench held that the word evidence used in Section 319 Cr.P.C.

has been used in a comprehensive sense and includes the material collected during investigation and it was not a case of dowry demand or any cruelty at the hands of the in-laws. It was urged that though the couple had moved out of the house in 2011 and were living separately and had differences and the FIR had been lodged in April 2015 and the order passed by the Additional Sessions Judge is perverse. Reliance was placed upon ***Babubhai Bhimabhai Bokhiria and anothers Vs. State of Gujarat and others 2014(2) RCR (Criminal) 915, Hardeep Singh Vs. State of Punjab and others 2014(1) RCR (Criminal) 623, Vikash Vs. State of Haryana and others 2016(3) RCR (Criminal) 609, Deepika Vs. State of Haryana and another 2015(4) RCR (Criminal) 66 and Sushil Soni Vs. State of Haryana and others 2016(3) RCR (Criminal) 793.***

On the other hand, the counsel appearing for the complainant supported the order and it was urged that the petitioners were named in the FIR and the complainant had named them in the statement made in the Court and the Court can summon a person as an accused if complicity of that person appears to be clear and the Court has rightly exercised the discretion. Reliance was placed upon ***Ram Pal Singh & Ors. Vs. State of U.P. & Anr. 2009(2) RCR (Criminal) 131 and Mann Singh and others Vs. State of Punjab and another 2009(2) RCR (Criminal) 289.***

The marriage between the couple had taken place in 2009. Two children were born to them. The complainant had given an affidavit that they were living separately from the in-laws since 22.04.2011. She had also stated therein that she has no connection with her in-laws or their property. The FIR was registered four years later where the complainant named the husband, mother-in-law and the father-in-law. The police had thoroughly

investigated the case and had filed the challan only against the husband. It was found that the parents had disinherited their son. It was not disputed that the complainant had given an affidavit Annexure P-7 where she had admitted that she was suffering from depression. She had also mentioned that she was living with her parents for the last one year. This affidavit was given in April 2012. The police had thoroughly investigated the matter and had found that the in-laws were living separately and no incident had occurred. The trial Magistrate had rightly dismissed the application as it noted that there was no new evidence. The complainant in her statement in the Court had admitted that she and her husband came to live in a rented accommodation out of their own wish and that the in-laws were not interfering. In the light of this statement, the Revisional Court could not have summoned the additional accused. It has been noticed that in matrimonial disputes the endeavor is to rope in all the relatives to wreck vengeance since the marriage has failed. The Revisional Court failed to consider the reasons given by the police for exonerating the in-laws. There was no evidence much less *prima facie* to summon the additional accused. The Revisional Court failed to follow the principles laid down by the Constitutional Bench in ***Hardeep Singh's*** case (supra). The power under Section 319 Cr.P.C. is an extra ordinary power and discretionary one and it should not have been exercised in this case. Hence, the petition is allowed and the order passed by the Revisional Court is set aside.

July 13, 2018

sunil

**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No