

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

Crl. Misc. No.27608 of 2018 in/and
Crl. Revision No.2010 of 2018(O&M)
Date of Decision: August 13, 2018

Parveen Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Puneet Kumar Bansal, Advocate
for the applicant-petitioner.

JAISHREE THAKUR, J. (Oral)

CRM-27608-2018

1. This application has been preferred for preponing the hearing of the main case, which is listed for 10.12.2018.

2. For the reasons mentioned in the application, the same is allowed and the main case, which is listed for 10.12.2018, is taken up for hearing today.

CRR-2010-2018

1. The instant criminal revision has been preferred seeking to challenge the order dated 30.04.2018 passed by the Sessions Judge, Sangrur whereby, the application moved by the prosecution under Section 319 of Code of Criminal Procedure (for short 'the Cr.P.C.') for summoning Sameer Gupta @ Shanty (brother-in-law) and Renu Rani (sister-in-law) as

additional accused to face the trial has been dismissed.

2. In brief, the facts of the case are that FIR No.342 dated 25.10.2017 came to be registered under Sections 304-B, 34 of Indian Penal Code at Police Station City Sangrur, District Sangrur on the statement of petitioner-complainant Parveen Kumar given to the police on 25.10.2017 to the effect that his younger sister Reena Rani was married to Parveen Kumar son of Kamlesh Chand in the year 2011, out of which wedlock, one boy namely Chirag was born. His brother-in-law Parveen Kumar expired in the year 2013. Thereafter, they solemnized marriage of his sister Reena Rani in April 2017 with Yugesh Kumar son of Roshan Lal, as per customs at Pearl Palace, Sangrur and had given dowry as per their capacity and had spent ₹ 7-8 lacs. It was mentioned by the petitioner-complainant that after two months of the marriage of his sister, her husband Yugesh Kumar, mother-in-law Saroj Rani, brother-in-law Shanti and sister-in-law Renu Rani started taunting and harassing her for bringing less dowry. Her husband Yugesh Kumar used to beat his sister and this fact was told by his sister to him and his father number of times. The complainant and his relatives tried to get Yugesh Kumar and his family to mend their ways. On 25.10.2017, at about 12 noon, when he was going towards Barnala chowk, he saw that his sister Reena Rani was being taken to Civil Hospital Sangrur by her sister-in-law Renu Rani and her sister had kept her head on the shoulder of her sister-in-law. The complainant also reached Civil Hospital, Sangrur, however, as condition of his sister was very critical, she was referred to another hospital, after giving first aid. Thereafter, he admitted his sister at Rajindra Hospital, who expired there during treatment. The complainant alleged that his sister

ended her life by taking some poisonous substance due to harassment meted out to her by her husband, mother-in-law, brother-in-law and sister-in-law.

3. After the registration of the aforesaid FIR, the matter was investigated by the police and during enquiry, brother-in-law Sameer Gupta @ Shanti and sister-in-law Renu Rani were found innocent. Thereafter, statement of the petitioner-complainant was recorded in the court on 19.03.2018, in which, he specifically named both Sameer Gupta and Renu Rani as accused along with husband Yugesh Kumar and mother-in-law Saroj Rani for causing maltreatment to the deceased, as a result of which the deceased consumed poisonous substance and died. After that, an application has been preferred under Section 319 Cr.P.C. for summoning Sameer Gupta @ Shanti and Renu Rani to face the trial along with other accused, which application came to be dismissed by the impugned order dated 30.04.2018. Being aggrieved, the instant criminal revision has been filed.

4. Learned counsel appearing on behalf of the petitioner argues that the impugned order dated 30.04.2018 passed by the Sessions Judge, Sangrur is wrong and illegal, while submitting that the petitioner-complainant has categorically deposed against the persons sought to be summoned under Section 319 Cr.P.C. and the findings recorded by the trial court are without any basis.

5. I have heard learned counsel for the petitioner, apart from perusing the pleadings as well as the impugned order.

6. The law is now well settled as regards summoning a person as an additional accused under Section 319 Cr.P.C. The power to summon a person as an additional accused is undisputed, but the same has to be

exercised sparingly, with caution, and to be exercised in order to ensure that the culprit does not get away. In ***Hardeep Singh v. State of Punjab, (2014)***

3 SCC 92 the Constitution bench of the Supreme Court held:

“105. Power under Section 319 CrPC 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.

*106. 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 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused.”(emphasis supplied).*

7. The Supreme Court in ***Brijendra Singh and others vs. State of Rajasthan***, (2017) 7 SCC 706, while summing up the ratio as laid down in ***Hardeep Singh's case*** (supra) held:

“Power under Section 319 Cr.P.C. can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some ‘evidence’ against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The ‘evidence’ herein means the material that is brought before the Court during trial. In so far as the material/ evidence collected by the IO at the stage of inquiry is concerned, it can be utilized for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross- examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom chargesheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.”

8. The trial court, while dismissing the application moved under Section 319 Cr.P.C., has observed as under;

“..... I have carefully gone through the statement of complainant Parveen Kumar recorded before by the police on 25.10.2017, which is Exhibit PA. As per the facts, the victim was got married with Yugesh Kumar in April, 2017 and the occurrence took place on 25.10.2017. When the statement of Parveen Kumar was recorded, he levelled allegations against Yugesh Kumar husband, mother-in-law Saroj Rani, brother-in-law Shetty and sister-in-law Renu Rani for causing harassment to the victim for bringing less dowry. The complainant stated that because of this reason, the victim was compelled to end her life by consuming poison. In the statement given to the police Exhibit PA, Parveen Kumar further stated that he saw his sister going along with Reena Rani by resting her head on the shoulder of Reena Rani towards Civil Hospitals, Sangrur. These facts are also confirmed by Parveen Kumar as PW-1 and the statement given to the police is Exhibit PA. The perusal of this statement clearly indicates that it was Reena Rani, who admitted the victim to the hospital by taking her in a rickshaw. The allegations regarding demand of dowry and maltreatment qua Reena Rani and Sameer Gupta alias Shetty her husband does not carry much weigh. They were not to be benefitted in any manner in case any dowry articles were to be given. The allegations against them regarding maltreatment and demand of dowry are general in nature and vague, thus, not sufficient enough to summon them to face trial on application under Section 319 Cr.P.C. It cannot be ignored that even

during inquiry conducted by the police, both of them were found to be innocent. Considering all facts and circumstances of the present case, I do not find sufficient material on the record to summon both Sameer Gupta alias Shanti and Renu Rani as accused to face trial along with Yogesh Kumar and Saroj Rani. Therefore, the application filed by the prosecution under Section 319 Cr.P.C. is declined.”

9. In view of the ratio of law laid down in ***Brijendra Singh's case*** and ***Hardeep Singh's case (supra)***, this court is of the considered view that the trial court has rightly dismissed the application moved under Section 319 Cr.P.C. In his statement, on the basis of which the FIR was registered, the petitioner-complainant has levelled general allegations qua Sameer Gupta @ Shanti and Renu Rani for harassing the deceased, on account of bringing less dowry. In fact, they are brother-in-law (devar) and sister-in-law (devrani) of the deceased, who had no concern with the matrimonial life of the deceased. The marriage between the deceased and Yugesh Kumar was solemnized in April, 2017 and the alleged occurrence took place on 25.10.2017. Moreover, as per the contents of the FIR, it was Renu Rani, who got the deceased admitted to the Civil Hospital, Sangrur. Further, they were found innocent during the inquiry by the police. The husband and mother-in-law of the deceased are already facing the trial. The facts and circumstances of the case do not warrant summoning of Sameer Gupta @ Shanti and Renu Rani as additional accused under Section 319 Cr.P.C.

10. In view of the above discussion and ratio of law, this court does not find any illegality or infirmity in the impugned order so passed. The criminal revision in hand is accordingly dismissed.

11. Needless to say, anything observed or said by this court is only for the purpose of deciding the present criminal revision, which would not prejudice the mind of the court below in any manner.

August 13, 2018
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No