

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

Crl. Revision No. 2490 of 2018 (O&M)
Date of Decision: 2.8.2018

Haji Nasru

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Abhimanyu Singh, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

1. The petitioner herein seeks to challenge the order dated 5.7.2018 passed by the Additional Sessions Judge, Nuh, dismissing the application filed under Section 319 of the Code of Criminal Procedure for summoning Gafodi wife of Safi Mohd., Firdos daughter of Safi Mohd and Jaffar son of Safi Mohd, as additional accused.

2. In brief the facts are that an FIR was registered at Police Station Ferozepur Jhirka, District Mewat by Haji Nasru for taking legal action against (1) Hidayat @ Hidda, (2) Sarra son of Safi Mohammed, (3) Safi Mohammed son of Meo Khan, 4 Gafondi wife of Safi Mohammed, (5) Jaffar son of Safi Mohammed, and (6) Firra daughter of Safi Mohammed, on the allegation of demand of dowry and for hanging his niece Sahrana for not fulfilling the demand of dowry. The matter was investigated and a challan was presented against Hidayat and Sarra both sons of Safi Mohammed and Safi Mohammed, whereas Gafondi, Firra and Jaffar, who are sought to be

summoned, were found innocent in the investigation. Thereafter, statement of the complainant Haji Nasru, uncle of the deceased, was recorded in which it was stated that sufficient dowry had been given as desired by Hidayat @ Hidda and his family members, including ornaments of gold and silver. Apart from that ₹ 3.5 laks were spent in the marriage. After 5-6 months of the marriage, the in-laws of his niece Sahrana started harassing her on account of bringing inadequate dowry and there was a demand for cash of ₹50,000/- to 1 lakh and a Bolero car. It was also stated that she was given beatings on account of the above demand and the accused threatened to kill her in case the said demands were not fulfilled. It was alleged that on 3.5.2017, the accused persons conspired with each other and caused injuries to Sahrana with kicks and fits and she was killed at 12 noon by way of hanging. On 25.1.2018, cross-examination of the complainant was deferred and thereafter an application under Section 319 of the Code of Criminal Procedure was filed by the complainant seeking to summon Gafodi wife of Safi Mohd., Firra daughter of Safi Mohd and Jaffar son of Safi Mohd, as additional accused, which came to be dismissed.

3. Learned counsel appearing on behalf of the petitioner/complainant argues that in the FIR that came to be registered, it has been specifically mentioned that legal action should be taken against (1) Hidayat @ Hidda, (2) Sarra son of Safi Mohammed, (3) Safi Mohammed son of Meo Khan, 4 Gafondi wife of Safi Mohammed, (5) Jaffar son of Safi Mohammed, and (6) Firra daughter of Safi Mohammed and despite specific allegations having been made that all of them harassed his niece and there was a demand of dowry only the husband Hidayat @ Hidda and two other

have been summoned. It is argued that the persons sought to be summoned as additional accused were also named in the statement recorded under Section 161 of the Code of Criminal Procedure and thereafter in the statement that was recorded before the Additional Sessions Judge, it was again reiterated that Hidayat @ Hidda and his family members used to harass his niece and the above said persons in conspiracy with each other caused injuries to his niece and killed her by way of hanging and, therefore, there was sufficient evidence available on record to summon the said persons. Therefore, the order rejecting the application under Section 319 of the Code of Criminal Procedure is unsustainable.

4. I have heard learned counsel for the petitioner as well as perused the impugned order passed by the Additional Sessions Judge, Nuh, declining the application. Additional Sessions Judge took note of the fact that there was nothing stated in the complaint by the complainant that any of the persons sought to be summoned actually gave injuries to the deceased. It was also noted that no specific role had been attributed to any of these persons and all the allegations made therein were general in nature regarding demand of dowry. By relying upon the case law rendered by the Supreme Court in **Krishnappa Versus State of Karnataka 2004 (4) RCR (Criminal), 678, Palanisamy Gounder and another Versus State represented by Inspector of Police, 2006 (2) RCR (Criminal) 235, Brijender Singh and others Vs. State of Rajasthan 2017 (3) RCR (Crl.) 374 (S.C.) and Laxmi Versus State of Haryana and another in Criminal Misc. M 36549 of 2017 decided on 28.09.2017**, it was held that there was nothing available on the record by way of evidence to summon the persons

mentioned in the application as additional accused.

5. Undoubtedly, power under Section 319 of the Code of Criminal Procedure is an extraordinary power in the hands of the courts to summon and try a person but there are fetters on this power which has to be exercised judiciously and sparingly in order to avoid any injustice to any person. In **Brijender Singh's case (supra)**, while relying upon the judgment of the Supreme Court in **Hardeep Singh vs. State of Punjab and others, 2014 (1) R.C.R. (Criminal) 623**, it was held that in order to summon a person fresh evidence must come on the record during the trial so as to summon such person as additional accused. In the instant case, the contents of the FIR, the statements recorded under Section 161 of the Code of Criminal Procedure and the statement recorded in the Court are general allegations which is nothing but an attempt to rope in the entire family members of the husband of the deceased. The matter was investigated on the basis of the complaint, statements were recorded under Section 161 of the Code of Criminal Procedure and the persons sought to be summoned as additional accused were declared innocent. Other than the statements that has been recorded during the trial, which by itself does not state anything different than what has already been investigated, there is no fresh evidence available to summon them.

6. Finding no infirmity in the impugned order, the instant revision petition is dismissed.

(JAISHREE THAKUR)
JUDGE

2.8.2018
prem

Whether speaking/reasoned
Whether reportable

Yes
No