

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

**AT CHANDIGARH**

**Criminal Misc. No.M-14072 of 2015**

**Date of Decision: 24.09.2019**

Parvinder Singh & others

...Petitioner(s)

Versus

State of Punjab & another

...Respondent(s)

**CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA**

Present:- Mr. Karanjit Singh, Advocate  
for the petitioners.

Mr. Saurav Khurana, DAG, Punjab.

Mr. Kanwaljeet Singh Derabassi, Advocate  
for respondent no.2.

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**HARI PAL VERMA, J.**

Whereas, the Petitioners no.1 and 3 are brothers-in-law, the petitioner no.2 is sister-in-law of the complainant-respondent no.2, have filed this petition under Section 482 CrPC for setting aside the order dated 18.01.2014 (Annexure P-3) passed by Additional Chief Judicial Magistrate, Patiala, whereby, on an application moved by respondent no.2 through APP under Section 319 CrPC, they have been summoned to face trial, as additional accused.

Briefly stated, as per the allegations made by respondent no.2-complainant, the marriage between Bikramjit Singh (husband) and complainant was solemnised on 11.04.2005, wherein the father of

complainant after availing loan of Rs.4,00,000/-, had given Rs.6,00,000/- in cash to the in-laws of respondent no.2 in addition to the other expenses incurred in the marriage. However, after one week of the marriage, the husband started quarrelling with the complainant so as to compel her to bring more money. He gave her beatings. The complainant narrated the harassment to her father. Since her father was a heart patient, he could not bear it and suffered heart attack. Ultimately, he died on 04.05.2005. Despite this, the in-laws family did not show any sympathy towards the complainant. On 30.11.2005, petitioner no.2-*Nanad* got married and after 3-4 days, the husband of the complainant and petitioner no.3 left for abroad (France). Thereafter, the in-laws of the complainant again started taunting and beating her for dowry. On 04.12.2005, when *Nanad* of complainant had come to their house, she along with mother-in-law, father in law and brother-in-law (*Devar*) of the complainant, started beating her without caring the fact that the complainant was having 6 months pregnancy. On 07.12.2005, they again gave beatings to the complainant and ousted her from her matrimonial home. Since then, the complainant is residing in her parental home, where twin daughters were born to her. Despite having come to know about the birth of daughters, the in-laws of complainant did not allow her to enter in her matrimonial home. The complainant's family even went to the matrimonial home of the complainant along with panchayat, but to no avail. Thereafter, the complainant received phone calls from her husband who was abroad asking her if the parents of the complainant could arrange ₹10 lakhs, then he can bring her abroad. After some time her husband told her that his documents in Italy have expired

and if she would give him divorce, he can marry there and become a permanent resident and thereafter, he will bring her to Italy. Even the in-laws of the complainant started giving threats to her in this regard. On the basis of the allegations so levelled by the complainant in her complaint against her in-laws, the present FIR under Section 406, 498-A IPC was registered against them. During investigation of the case, the petitioners were declared innocent and placed in column no.2 of the challan. However, after recording the statement of the complainant, the prosecution moved an application under section 319 CrPC, for summoning of the present petitioners, which was allowed by learned Additional Chief judicial Magistrate, Patiala vide order dated 18.01.2014.

It is in these circumstances the petitioners-accused have filed the present petition, assailing the order dated 18.01.2014 passed by learned Additional Chief Judicial Magistrate, Patiala.

Learned counsel for the petitioners has argued that the petitioners have been falsely implicated in the present case just to harass and settle scores. There are no specific allegations against the petitioners in the FIR. The allegations are general and vague and the petitioners have unnecessarily been dragged into the litigation as they are family members of her husband. The marriage between the complainant and Bikramjit Singh had taken place on 11.04.2005 and thereafter, Bikramjit Singh left for Italy in 2005 itself. The complainant also left her matrimonial home after few days of marriage and since then she is staying at her parental home. The FIR in question has been registered in the year 2008, whereas petitioner No. 2 and 3 had already left for abroad in 2005 and 2007

respectively and since then they are residing there. Petitioner No.1 is a National level sportsperson and is working in Punjab Police and is residing at Jalandhar prior to the marriage of the complainant with Bikramjit Singh. Even otherwise, the present petitioners have been declared innocent in an enquiry conducted by D.S.P. (D), Patiala and were accordingly, placed in column No.2.

On the other hand, learned counsel for the respondent No.2-complainant, while supporting the order passed by the Magistrate, has argued that there are specific allegations against the petitioners and sufficient evidence is available against them to show that they treated the complainant with cruelty for bringing insufficient dowry.

I have heard learned counsel for the parties and perused the impugned order.

The marriage between the complainant and Bikramjit Singh had taken place on 11.04.2005, whereas the FIR in question was registered on 22.10.2008. Petitioners No.1 and 3 are brothers-in-law whereas petitioner No.2 is married sister-in-law of the complainant. The husband of complainant-Bikramjit Singh had left for Italy in 2005 and never returned back. Similarly, petitioner No. 2 and 3 had also left for abroad in 2005 and 2007 respectively and since then they are residing there. The complainant herself had also left her matrimonial home in 2005 itself. Thus, petitioners no.2 and 3 have shifted to abroad much before the registration of the present FIR i.e. 22.10.2008.

The allegations levelled by the complainant against the petitioners, who are brothers-in-law and sister-in-law of the complainant,

have duly been looked into by the police during investigation, and it is thereafter, they were declared innocent by D.S.P. (D), Patiala and were placed in column No.2. This Court finds that except the allegations levelled by the complainant, there is no other sufficient material before this Court warranting summoning of respondents, as additional accused, particularly when they were declared innocent during investigation and petitioners no.2 and 3 had left for abroad much before the registration of the FIR. In this regard, reference may be made to judgment in the case of **Geeta Mehrotra and another Versus State of U.P. and another** 2012(4) RCR (Criminal) 812, wherein, Hon'ble the Apex Court has held that in criminal cases, arising out of a matrimonial disputes, a fact borne out of experience cannot be overlooked that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute.

No doubt, Section 319 Cr.PC provides that where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused, has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed. However, at the same time, no person, on an application under Section 319 Cr.PC, can be summoned as an additional accused merely on the basis of statement of the complainant recorded in the Court unless there is sufficient material to summon. In order to summon an accused, some "fresh evidence" must have come on record so as to impel the Court to summon such person as an additional accused.

Hon'ble Apex Court in the case of ***Pepsi Foods Limited and another Versus Special Judicial Magistrate and others*** (1998) 5 Supreme Court Cases 749 has held as under:

*“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”*

Similarly, in the case of ***Hardeep Singh Versus State of Punjab*** (2014) 3 SCC 92, it has been held by the Apex Court that the degree of satisfaction for invoking Section 319 Cr.P.C. should be of more than a *prima-facie* case, as exercised at the time of framing of charge, but short of satisfaction to an extent that evidence, if not rebutted, may lead to conviction of the person sought to be added as accused. Thus, power under Section 319 CrPC being discretionary, has to be exercised sparingly, only when there is cogent evidence and the circumstances so desire.

In view of the aforesaid, when the facts of the present case are analyzed in the light of judgments of the Apex Court in the cases of ***Geeta Mehrotra and another*** (*supra*), ***Pepsi Foods Limited and another*** (*supra*), and ***Hardeep Singh*** (*supra*), this Court finds that the petitioners have been summoned by the trial Court without there being any material against them, particularly when petitioners no.2 and 3 had left for abroad much before the registration of the present FIR and thus, the chances of conviction of the petitioners-accused in the case, are quite bleak. Therefore, no useful purpose would be served to summon the accused.

Accordingly, the present petition is allowed and the impugned order dated 18.01.2014 passed by learned Additional Chief Judicial Magistrate, Patiala is set aside.

September 24, 2019  
AK

( HARI PAL VERMA )  
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No