

113.

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

CRR-2346-2019 (O&M)

Date of decision: 13.09.2019

JYOTI

... Petitioner

versus

STATE OF HARYANA AND OTHERS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Ms. Sunita Punia, Advocate, for the petitioner.

HARI PAL VERMA, J. *(Oral)*

Petitioner-complainant has filed the present revision petition impugning the order dated 17.05.2019 passed by the learned Additional Sessions Judge, Panipat, whereby the application filed by the prosecution under Section 319 Cr.P.C. to summon Sunil (her brother-in-law), Renu (sister-in-law) and Chanda (mother-in-law), as additional accused, to face trial in FIR No.86 dated 08.11.2016 registered under Sections 323, 498A, 506 of IPC and Section 3 of SC/ST Act at Police Station Women, Panipat, was dismissed.

Counsel for the petitioner has argued that there are specific allegations against the accused as the complainant was not only being harassed, rather given beatings by the accused including respondents sought to be summoned. The police has submitted report against Parveen, who is husband of the complainant. The respondents i.e. Sunil, Renu and Chanda were kept in column No.2. However, after framing of the charge when the statement of the complainant was recorded, thereafter, an application under Section 319 Cr.P.C. was filed so as to summon the additional accused, but

the learned trial Court has failed to consider the statement of the complainant and has wrongly dismissed the application. At the stage of summoning in proceedings under Section 319 Cr.P.C., the Court has to form an opinion as to whether there existed a prima facie case against the additional accused sought to be summoned, but in the case in hand, since there were clear allegations against the accused, they were required to be summoned to face trial.

I have heard counsel for the petitioner.

The order dated 17.05.2019 passed by learned Additional Sessions Judge, Panipat does reflect that there was improvement in the statement of the complainant recorded under Section 164 Cr.P.C. and for such improvement, no satisfactory explanation has come forward. As per earlier statement recorded by the complainant under Section 164 Cr.P.C., the kitchen was separate and the persons sought to be summoned were maintaining the separate kitchen. Since the complainant belongs to Scheduled Caste, she was not allowed to enter the kitchen and to even interact/touch the children of the accused. The allegation against Sunil (brother-in-law) is that he caught hold of hand of the complainant.

While dismissing the application, the learned Additional Sessions Judge has rightly pointed out that merely because the accused sought to be summoned are maintaining a separate kitchen or they are not allowing the prosecutrix-complainant to interact with their children, is not an example of atrocity. No such explanation has come forward from the complainant as regard the caught hold of the hand of the complainant by the brother-in-law.

Summoning of additional accused is a serious issue and the court must not summon the accused in a mechanical manner. The Hon'ble Supreme Court in ***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 scrutinise 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.”

In ***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.

Apart from the fact that the additional accused sought to be summoned are married sister-in-law and brother-in-law, investigation in the case has been conducted and they have been found innocent during investigation.

Now-a-days, it has become a tendency to involve the whole family in the proceedings like the present one and such tendency needs to be curbed. The Hon'ble Apex Court in *Geeta Mehrotra and another Versus State of U.P. and another, 2012(4) RC.R. (Criminal) 812* has held that in criminal cases arising out of a matrimonial dispute, 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 home.

In view of above, this Court finds that summoning of a person as an additional accused in a criminal case is a serious matter. The courts are required to be very cautious to deal with the issue as to whether a person is to be added as additional accused or not. Though the power under Section 319 Cr.P.C. to summon additional accused is discretionary, but it should be exercised judicially and very sparingly.

Accordingly, this Court does not find any illegality in the order passed by the court below.

Dismissed.

(HARI PAL VERMA)
JUDGE

13.09.2019
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No