

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

CRM-M-39255 of 2019.

Decided on:- November 07, 2019.

Gunjan Kumari.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

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

Present:- Mr. Dhruv Sihag, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present petition under Section 482 Cr.P.C. impugning order dated 06.10.2018 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Narnaul, whereby the application filed by the petitioner-complainant under Section 319 Cr.P.C. through APP for the State, so as to seek summoning of respondents No.2 to 4, namely, Santosh (mother-in-law), Jaggan Nath (father-in-law) and Naveen (brother-in-law) as additional accused, was dismissed.

Challenge has also been laid to the order dated 19.04.2019 (Annexure P-1) passed by learned Additional Sessions Judge, Narnaul vide which the criminal revision filed by the petitioner-complainant against the aforesaid order dated 06.10.2018, was dismissed.

Briefly stated, accused Nilesh, who is husband of the petitioner-complainant is facing trial in FIR No.49 dated 24.10.2017 under Sections 498-A, 406, 323 and 506 read with Section 34 IPC registered at Police Station Women, Narnaul. During the trial, the petitioner-complainant moved an

application under Section 319 Cr.P.C. through APP for the State seeking summoning of respondents No.2 to 4, namely, Santosh (mother-in-law), Jaggan Nath (father-in-law) and Naveen (brother-in-law) on the ground that in the initial statement made by the petitioner-complainant to the police and thereafter, during her evidence before the trial Court as PW4, a specific role has been attributed to respondents No.2 to 4. However, the said application was dismissed by learned Magistrate on the ground that though the prosecution has examined the witness, but still nothing incriminating has come out against respondents No.2 to 4, who are already exonerated during investigation. The complainant has simply reiterated her statement as it was mentioned in the initial statement to the police. Nothing new has been pleaded in the application contradicting the exoneration of the accused.

The aforesaid order dated 06.10.2018 was challenged by the petitioner by way of revision. However, the same was also dismissed by the revisionary Court vide order dated 19.04.2019.

Learned counsel for the petitioner has argued that the Courts below have dismissed the application under Section 319 Cr.PC without appreciating the evidence on record in derogation of the settled cannons of law. At the time of registration of the FIR, specific allegations were made by the petitioner against the respondents No.2 to 5. The stand of the petitioner has never changed, in fact, she has stood by her averments which further adds to the credibility of her statement. She has specifically stated in the FIR and thereafter, in her statement as PW4 that her husband along with the private respondents harassed her and gave her beatings on several occasions, but the Courts below have failed to appreciate the specific role so attributed to them.

The accused sought to be summoned were exonerated in a mechanical manner without assigning any reason. The investigating officer did not make the MLR dated 03.08.2017 as a part of the Challan, which shows that the investigation in the case was carried out with callous and biased attitude of the investigating officer, so as to help the accused sought to be summoned.

He has further argued that the Courts below have wrongly held that as nothing new has been brought on record, the application under Section 319 Cr.PC deserves to be dismissed. The very object of Section 319 Cr.PC is to summon those accused, who have been exonerated by the police without properly appreciating the evidence during the investigation or in an illegal manner. In the case in hand, the police has wrongly exonerated respondents No.2 to 5, and thereafter, they need to be summoned, so as to face trial with other co-accused.

I have heard learned counsel for the petitioner.

The provision of 319 Cr.PC, no doubt, empowers the Court to proceed against other persons appearing to be guilty of offence, 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. But in the case in hand, nothing new has come on record except the bald statement of petitioner-complainant as PW4, which may prima-facie establish that respondents No.2 to 5 have committed the offence warranting their summoning.

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.

In the case in hand, the marriage of petitioner-complainant was solemnised with accused Nilesh on 26.05.2010, whereas the FIR was registered on 24.10.2017. Though the petitioner-complainant has claimed that she was harassed soon after the marriage, but it is her own admitted case that before filing of the application Ex.PW4/A, she has never moved an

application against respondents No.2 to 5. Demand of dowry after more than 7 years of marriage and that too against relatives seems to be unrealistic.

Therefore, this Court finds that there is no illegality in the order dated 06.10.2018 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Narnaul as well as the order dated 19.04.2019 (Annexure P-1) passed by learned Additional Sessions Judge, Narnaul, which may warrant interference by invoking the jurisdiction of this Court under Section 482 Cr.P.C.

Accordingly, the present petition, being devoid of any merit, is dismissed.

November 07, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No