

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No.M-42840 of 2019

Date of Decision: 04.10.2019

Shikha Aggarwal

...Petitioner(s)

Versus

Anil Kumar Garg & others

...Respondent(s)

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

Present:- Mr. Ashok Aggarwal, Advocate
for the petitioner.

HARI PAL VERMA, J. (Oral)

Petitioner-complainant Shikha Aggarwal has filed the present petition under Section 482 CrPC for setting aside the judgment dated 27.08.2019 (Annexure P-1) passed by Additional Sessions Judge, Faridabad, whereby the revision petition preferred by the petitioner against the order dated 13.09.2018 (Annexure P-2) passed by Judicial Magistrate Ist Class, Faridabad dismissing the application filed by the petitioner under Section 319 CrPC to summon respondents no.1 and 2, as additional accused, was dismissed.

As per the allegations so levelled by the petitioner-complainant, the marriage between the petitioner and respondent No.3 was solemnised on 23.2.2012 and in the marriage, huge amount of dowry was given to the respondents-accused. The father of the petitioner had spent

approximately Rs.70 lakhs in the marriage. After the marriage, further expenses were also made by the father of the petitioner on the occasions of Diwali, Karwa Chauth, Makar Sakranti etc. The father of the petitioner had even transferred a 3 BHK flat in the name of the petitioner, the cost of which was Rs.60 lakhs approximately. But the lust of the respondents-accused for more dowry could not be satisfied and they constantly started taunting the petitioner. They tortured the petitioner for dowry despite the fact that she was at advance stage of her pregnancy. Lastly, the petitioner was left alone in the house and a message was conveyed to her through one Prashant Sheoran on 05.11.2014 to go to her parental home, as her husband, respondent No.3, will come after some days. When the petitioner did not agree to go, said Prashant Sheoran telephonically persuaded the father of the petitioner to take her to her parental home in Faridabad, where the petitioner delivered a female child after 10 days. This is how the respondents-accused had planned to throw the petitioner out of her matrimonial home. The respondents-accused used to say that some Panditji of their family had predicted that the petitioner would become a widow within 4 years of her marriage, due to which, they started putting pressure upon the petitioner to get mutual divorce. On the basis of the complaint so filed by the petitioner, an FIR under Section 406 and 498A IPC was registered against the respondents-accused, however, the final report under Section 173 CrPC was filed only against respondent no.3-husband and accordingly, charge was framed.

It is in these circumstances, the petitioner has moved the instant application under Section 319 CrPC for summoning of respondents no.1 and 2, as additional accused.

The application filed under Section 319 CrPC for summoning of the respondents-accused, as additional accused, was dismissed by Judicial Magistrate Ist Class, Faridabad vide order dated 13.09.2018 for the reasons that charegesheet was filed only against respondent no.3-husband and it is mentioned that concerned ACP had investigated the matter and no role of respondents no.1 and 2 was found in harassing the petitioner. No specific role has been attributed to them in raising any specific demand of dowry. The gifts and the amounts of money were given on some special occasions. Even otherwise, at the time of marriage, respondent no.3-husband was posted at Narnaul, from where he was transferred to Gurgaon and his family members, who were residing separately, used to come to him occasionally. Thus, occasional visits of the accused on special occasions, does not mean that they were raising any demand of dowry or committed the offences, as alleged.

Aggrieved from the aforesaid order dated 13.09.2018, the petitioner filed a revision petition. However, the same was also dismissed by learned Additional Sessions Judge, Fardiabad vide order dated 27.08.2019. The relevant paragraphs of the order passed by the revisionary Court read as under:-

“Incidentally, the copy of the registration certificate of the car or that of the residential flat were never placed before this court to show that those items are registered in the name of either of the two persons proposed to be summoned as

accused by invoking the provisions of section 319 of Code of Criminal Procedure. There is evidence on record to believe that accused Kunal Garg is a Judicial Officer whose parents did not reside with him on permanent basis. They had visited the residence of the accused on one occasion when their other son had met with an accident resulting in amputation of his left leg. The complainant did not relish their stay and they were obliged to beat a retreat and return to their permanent abode. It is he who shall be liable to answer for his conduct and not his parents.

There is a very important and relevant fact in this case which deserves a mention here. Accused Kunal Garg had filed a petition for divorce under Section 13 of Hindu Marriage Act, one and a half year prior to the filing of this case by his wife, meaning thereby that the possibility of allegations against the parents-in-law being a part of carefully drafted strategy and after thought can not be ruled out. A careful perusal of the complaint would also reveal that all the allegations are of very general nature and it is also alleged therein that the girl's side had given a car, a residential flat and many valuable articles in the wedding and on certain subsequent occasions but there are no direct allegations that the two persons proposed to be summoned at this stage had made the demands directly to them. It has been alleged that demands were made through the 'mediator' on all the occasions or that they had given these items to the family. All these facts prima facie go to show that the investigating officer had acted prudently and drawn appropriate conclusions based on facts and circumstances presented before him. Thus the statement rendered by the complainant is insufficient to negate the conclusions drawn by the investigating officer and the revision must fail.

It is in these circumstances, the petitioner has filed the present petition challenging the orders dated 13.09.2018 and 27.08.2019 passed by the Courts below.

Counsel for the petitioner has argued that the Courts below have committed a grave error by dismissing the application filed under Section 319 CrPC for summoning respondents no.1 and 2, as additional accused, without appreciating the evidence on record. There are specific and clear allegations regarding causing of cruelty to the petitioner in connection with demands of dowry at the hands of additional accused sought to be summoned. But police has played a partisan role in the investigation and let off the parents-in-law of the petitioner without assigning any reason in the final report under Section 173 CrPC. Both the Courts did not appreciate the fact that the complaint was filed by the petitioner before the Commissioner of Police, Faridabad much prior to filing of the petition, but the police took lot of time in investigating the matter and filing challan under Section 173 CrPC and that too against respondent no.3 only.

I have heard learned counsel for the petitioner and perused the orders passed by the Courts below.

The parents-in-law of the petitioner-complainant are statedly living separately and used to visit their son on special occasions. As far as the allegations so levelled by the petitioner are concerned, the same have duly been looked into by the police during investigation and accordingly, final report under Section 173 CrPC was submitted in the Court against

respondent no.3-son only. The other allegations against the respondents-accused, sought to be summoned, are general in nature.

The argument raised by learned counsel for the petitioner that specific roles has been attributed to the respondents-accused sought to be summoned, has been duly dealt with by the trial Court and has declined to summon the accused. There is no entrustment of any dowry articles to them. The revisionary Court has given complete reasoning and justification while dealing with the revision petition filed against the order dated 13.09.2018 passed by learned Magistrate. No such material has been brought on record, warranting summoning of respondents, as additional accused.

In the case of **Geeta Mehrotra and another Versus State of U.P. and another** 2012(4) RCR (Criminal) 812, 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.

In the case of **Hardeep Singh v. State of Punjab** AIR 2009 SC 483, Hon'ble the Apex Court has held that the power under Section 319 CrPC has to be exercised only if the Court is satisfied that the accused so summoned is in all likelihood would be convicted. Thus, power under Section 319 CrPC being discretionary, has to be exercised sparingly, only when there is cogent evidence and the circumstances so desire.

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) **Hardeep Singh** *(supra)*, it is found that the petitioner-complainant has clearly failed to make out a case for summoning under Section 319 CrPC. Therefore, this Court does not find any illegality in the impugned orders passed by the Courts below.

Accordingly, the present petition is dismissed.

October 04, 2019
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?
Whether reportable?

Yes / No
Yes / No