

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

Crl. Misc. M 27446 of 2017 (O&M)
Date of decision: 30.1.2020

Ashwani Kumar and another

...Petitioners

Versus

State of Punjab and another

...Respondents

Present:- Mr. Ankur Bansal, Advocate,
for the petitioners.

Mr. Sidakmeet Singh Sandhu, AAG, Punjab.

Mr. Rajiv Joshi, Advocate,
for respondent No. 2—complainant.

JAISHREE THAKUR, J.

1. The instant petition has been filed seeking to challenge the impugned order dated 21.3.2017, summoning the petitioners as additional accused to face trial in Case No. 190/2014 dated 21.8.2014 titled “State Versus Surinder Kaur and others, pending before the Judicial Magistrate Ist Class, Phillaur, District Jalandhar.

2. In brief, the facts are that on 11.11.2013, the complainant—respondent No.2 made a complaint to the Senior Superintendent of Police, District Jalandhar, against as many as 12 persons, stating that marriage of the complainant—respondent No.2 was solemnized with Chinderpal in the year 2005, out of which wedlock a son was born. It was alleged that her husband had gone abroad and for the last three years neither did he send any money to her nor did ever phone her up. Therefore, she is completely

dependent upon her parents for maintenance of herself and her minor son. It

was alleged that the accused mentioned in the complaint had been harassing and beatings her after her marriage as they were forcibly demanding divorce from her. It was stated in the complaint that she wants to live with her husband in her matrimonial home and sought help to bring her husband back from abroad or she be taken by her husband along with him or her expenses to be met. After investigation, FIR No. 33 dated 26.3.2014 under Section 498-A IPC was registered against the husband of the complainant, namely Chinderpal and his two sisters, namely Manjit Kaur and Surinder Kaur. After presentation of challan, charges were framed and trial started. After statement of respondent No. 2 was recorded, the prosecution moved an application under Section 319 of the Code of Criminal Procedure for summoning the petitioners as well as other accused, namely Rahul and Ajay, which was allowed by impugned order dated 21.3.2017, which is under challenge in the instant petition.

3. Learned counsel appearing on behalf of the petitioners contends that the trial court did not apply its judicial mind while passing the impugned order. It is submitted that the impugned order is liable to be set aside since there is not even an iota of evidence on the record to hold the petitioners guilty of the offences under Section 498-A IPC. Rather the sequence of events would reflect that the present case is an classic example of sheer misuse of process of law. It is argued that initially when the complaint was lodged, the complainant had made allegations of harassment, beatings and torture against as many as 12 persons and after investigation, the police registered the FIR qua three persons only i.e. husband and his two

sisters. It is further submitted that a perusal of the statement so made by the complainant would reflect that no demand of dowry was ever made by the petitioners. It is further submitted that the petitioners are nephews of the husband of the complainant, whose father has expired and they had nothing to do with the day-to-day family affair of the complainant and her husband and, therefore, question of harassment, torture or beatings by the petitioners to the complainant does not arise at all. In fact, the petitioners along with their family had been residing separately prior to the marriage of the complainant with Chinderpal and, therefore, the question of harassment, beatings or subjecting the complainant to cruelty by the petitioners does not arise at all. It is further submitted that it is purely a dispute of matrimonial discord between the complainant and her husband and the petitioners have been unnecessarily dragged into this dispute. The statement of the complainant herself and the evidence led does not constitute the ingredients of commission of offence under Section 498-A IPC qua the petitioners. Learned counsel for the petitioners relies upon a judgment rendered in **Hardeep Singh etc. Versus State of Punjab and others AIR 2014 Supreme Court 1400** in support of his contentions.

4. Per contra, learned counsel appearing on behalf of the State as well as the complainant would submit that the impugned order has been passed after taking into account the statement of the complainant with regard to the involvement of the petitioners in the commission of offence complained of under Section 498-A IPC.

5. I have heard learned counsel for the parties and with their

assistance have gone through the record.

6. It is settled law that the power vested with the Court under Section 319 of the Code of Criminal Procedure (for short '**the Code**') should be exercised judicially and the Court must be satisfied that there is a strong ground made out for summoning a person as additional accused. In **Hardeep Singh's case (Supra)**, it has been held that there should be a strong prima facie case made out before a person should be summoned under Section 319 of the Code. In **Hardeep Singh (supra)**, the Hon'ble Apex Court framed following question:-

“Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted.”

7. The Hon'ble Apex Court, while examining the meaning of “evidence” concluded that the evidence would also mean the statement given in examination -in-chief and held as under:-

“70. With respect to documentary evidence, it is sufficient, as can be seen from a bare perusal of Section 3 of the Evidence Act as well as the decision of the Constitution Bench, that a document is required to be produced and proved according to law to be called evidence. Whether such evidence is relevant, irrelevant, admissible or inadmissible, is a matter of trial.

71. It is, therefore, clear that the word “evidence” in Section 319 Cr.P.C. means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the Court to decide whether power under Section 319 Cr.P.C. is to be exercised and not on the basis of material collected during

investigation.”

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80. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 Cr.P.C. The ‘evidence’ is thus, limited to the evidence recorded during trial.

Q.(ii) *Does the word ‘evidence’ in Section 319 Cr.P.C. means as arising in Examination-in-Chief or also together with Cross-Examination?*

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82. We have given our thoughtful consideration to the diverse views expressed in the aforementioned cases. Once examination-in-chief is conducted, the statement becomes part of the record. It is evidence as per law and in the true sense, for at best, it may be rebuttable. An evidence being rebutted or controverted becomes a matter of consideration, relevance and belief, which is the stage of judgment by the court. Yet it is evidence and it is material on the basis whereof the court can come to a prima facie opinion as to complicity of some other person who may be connected with the offence.”

While concluding, the question as posed above, the Hon'ble Apex Court held that “the power under Section 319 Cr.P.C. can be exercised at the stage of completion of examination-in-chief and court does not need to wait till the same evidence is tested on cross-examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court,

in respect of complicity of some other person(s), not facing the trial in the offence”.

8. Even in the subsequent judgment **Brijendra Singh and others Versus State of Rajasthan 2017 (3) R.C.R. (Criminal) 374**, the Hon'ble Apex Court, while dealing with the power of the courts to summon additional accused under Section 319 of the Code of Criminal Procedure has held that there must be some evidence against the person on the basis of which it can be gathered that he appears to be guilty of the offence. While holding that 'evidence' would mean material that is brought before the court during the trial, the Supreme Court held as under:-

“Power under Section 319 Cr.P.C. can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some ‘evidence’ against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The ‘evidence’ herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross- examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others

in respect of whom chargesheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity”.

9. In the backdrop of the above settled position of law and on a perusal of the complaint, inquiry report and the evidence so led by the complainant, this Court is of the opinion that no case is made out to summon the petitioners under Section 319 of the Code.

10. Admittedly, the petitioners are nephews of the husband of the complainant, whose father is no more in this world. From a bare perusal of the ration card annexed as Annexure P/11 with this petition, it is apparent that the petitioners had been living separately with their family prior to the marriage of the complainant with her husband—Chinderpal; nor had they ever shared the accommodation with the complainant. Thus, involvement of the petitioners in the day-to-day family affair of the complainant and her husband is not possible by any stretch of imagination. Therefore, the allegations of committing any cruelty such as beatings, harassment or torture at the hands of the petitioners to the complainant appear to be false. Furthermore, during the inquiry by the police, it was found that the petitioners have no role to play in the dispute between the complainant and her husband. The trial court, while passing the impugned order has observed that *“in her application Ex. PA moved before Police, complainant Reena Kumari had levelled allegations of dowry demand and cruelty there upon*

against the person mentioned as accused in the said application". This observation of the trial court is not borne out from the record; nor any evidence has been brought before the Court. For ready reference, the contents of the complaint, on the basis of which the FIR was lodged, are reproduced hereunder:-

"To

*S.S.P. Sahib,
(Rural) District Jalandhar.*

Subject:-Complaint against:- In respect of beatings given by in laws, harassing, non-payment of maintenance by the husband, , demanding divorce and for giving life taking threats.

Complaint against:- 1. Chinderpal s/o Karam Chand (Husband) r/o village Virk, Patti Mahlo Virk, P.S. Goraya, District Jalandhar 2. Manjit Kaur wife of Gurdev Lal (sister-in-law) r/o Palahi Gate near Guru Ravidass Gurudwara Sahib, Phagwara, District Kapurthala, 3. Gagandeep Gona s/o Lubhaya Ram r/o Virk, District Jalandhar, 4. Kamaljit Kaur wife of Lubhaya Ram r/o Virk, District Jalandhar, 5. Rachna d/o Lubhaya Ram r/o Village Virk, District Jalandhar, 6. Surinder Kaur (sister-in-law) wife of Gurnam Singh r/o Vill. and PO Mau Sahib, Tehsil Phillaur, District Jalandhar 7. Rakesh Kumar 8. Ashwani 9. Rahul 10. Ajay sons of Satpal r/o Virk, District Jalandhar, 11. Dharampal s/o Karam Chand, 12. Rajpal s/o Karam Chand (Brother-in-law) r/o Vill. Virk, District Jalandhar.

Sir,

It is submitted that I Reena Kumari wife of Chinderpal is r/o Village Virk, P.S. Goraya Tehsil Phillaur, District Jalandhar. I got married in year 2005. From this marriage a boy is born to me who is 5 years old. My husband has gone abroad. Now for the last 3 continuous years my husband is living abroad and he has neither sent me any maintenance nor telephoned me. For the last 3 continuous years my parents are giving me maintenance.

That above mentioned accused after my marriage started

harassing me. I was also given threat that if I gave birth to girl child then I shall not be kept in the house.

Above mentioned accused are harassing me in my house. I am given beatings by the accused. They are continuous threatening me that I shall not be kept in the house. They are forcibly demanding divorce from me. I want to reside with my husband in my in laws house. Accused are continuos threatening me that if I do not give divorce then I shall be killed. Accused also tried to kill me by stopping me on way. Day night I am under fear from the accused.

Accused without any reason in the house gave me beatings and slaps. Accused tried to kill me by Car No. 0023 and I with difficulty save myself. Panchayat of the village and accused are telling me again and again that I should give divorce to the boy. I want to reside with my husband kindly help me. My husband be called from abroad. Either my husband should take me with him or he should pay maintenance to me while staying in the house.

In the end, it is humbly prayed that strict action be taken against above said accused. Justice be given to me. I and my child be saved. If anything happens to me or to my child then above mentioned accused shall be responsible for the same. They are continuously giving me threats.

I shall be helped. Justice be given to me. I shall be thankful to you.

Thanking you,

Yours sincerely,

Dated: 11/11/2013

*Reena Kumari w/o Chinderpal
r/o Vill. Virk P.S. Goraya
Tehsil Phillaur, District
Jalandhar."*

11. In the complaint, general allegations of harassment and beatings have been levelled against all the persons mentioned in the complaint. No

specific date, time or occasions has been mentioned as to when she was beaten, harassed or tortured by the petitioners.

12. In view of the above discussion, there does not appear to be cogent or convincing evidence to connect the petitioners with the alleged commission of offence.

13. For the reasons afore-stated, this petition is allowed and the impugned order dated 21.3.2017 summoning the petitioners to face trial is set aside.

30.1.2020
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No