

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

CRM-M No.6270 of 2018 (O&M)

Date of decision: 6th February, 2020

Amritpal Singh @ Tinu

... Petitioner

Versus

State of Punjab & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Lakhwinder S. Mann, Advocate for the petitioner.

Mr. C.L. Pawar, Sr. Dy. Advocate General, Punjab
for respondent No.1.

None for respondent No.2.

FATEH DEEP SINGH, J.

This is a petition under Section 482 Cr.P.C. by accused petitioner Amritpal Singh alias Tinu wherein initially he had sought quashment of the FIR No.30 dated 12.04.2012 under Section 406, 498-A, 494 IPC pertaining to Police Station Gidderbaha, District Sri Muktsar Sahib (Annexure P1), which relief was subsequently given up vide orders dated 13.03.2019. Besides this, the petitioner had sought to challenge the summoning order dated 08.08.2017 (Annexure P4), by which the petitioner had been summoned as an additional accused with the aid of Section 319 Cr.P.C. by the Court of learned Judicial Magistrate 1st Class, Gidderbaha.

The brief allegations were levelled by the disgruntled wife complainant Sarabjit Kaur against her husband and his family members including the petitioner, who happens to be elder brother of her husband. The complainant in her allegations claims that her marriage was solemnized with Ajitpal Singh on 04.05.1997 where sufficient dowry articles were given to the satisfaction of the in-laws but subsequently they were not happy with the same and started demanding more. On failure of the complainant and her family to meet their demands, she was often tortured and physically abused. To assuage the feelings of the accused, the complainant claims that her family had given them ₹ 50,000/- but to no avail and that the amount so given was used by her husband and the present petitioner for their own needs and on the basis of the same, present case was got registered. The petitioner during the course of investigations, was found innocent. On recording of statement of the complainant Sarabjit Kaur as PW2, the impugned orders were passed summoning the petitioner as an additional accused.

Heard Mr. Lakhwinder Singh Mann, Advocate for the petitioner; Mr. C.L. Pawar, Sr. Dy. Advocate General, Punjab for respondent No.1/State and perused the records.

Learned counsel for the petitioner has cited '**Kavita vs. State of Haryana & others**' 2017(3) Law Herald 2590; '**Chandralekha & others vs. State of Rajasthan & another**' 2013(1) RCR(Criminal) 959; '**Anguri Devi etc. vs. State of Punjab etc.**' 2011(2)

RCR(Criminal) 431; ‘Sanjiv Kumar vs. State of Haryana & another’ 2012(3) RCR(Criminal) 87; ‘Vinod Kumar Babbal vs. State of Punjab’ CrI. Revn. No.3464 of 2012 decided on 04.04.2013; ‘Hukam Chand & another vs. State of Haryana & another’ 2007 (3) RCR(Criminal) 141; ‘Michael Machado & another vs. Central Bureau of Investigation & another’ 2000(2) RCR(Criminal) 75; ‘Deepak Shukla vs. Mahendra Chanpuriya’ 2002(2) DMC 161 to drive home the point that it has become a tendency to rope in each and every family member of the husband for an ulterior motive to wreck vengeance. It is submitted that being the elder brother of the husband, the present petitioner was residing separate and was not likely to gain anything out of any such demand and therefore, even in the earlier allegations of the prosecution no specific role has been attributed to him in commission of the offence.

Learned State counsel has opposed the prayer on the grounds that there are specific allegations against the petitioner who happens to be the elder brother of husband of the complainant, as to demand of dowry, harassment and cruelty and usurping of the articles of Istridhan and therefore, there was no cause to allow the prayer when the complainant as PW2 has reiterated the stand in toto.

Going through the submissions of the two sides, though learned counsel for the petitioner has laid much stress and emphasis in the light of ratios cited above to point out that there was no material on

the records to summon the petitioner as an additional accused. The law on this point is by now well settled for which reliance is sought to be placed on '**Hardeep Singh v. State of Punjab**' 2014(3) SCC 92. It is very much clear that powers under Section 319 Cr.P.C. are to be exercised sparingly with care and caution. While defining word 'evidence' Hon'ble the Supreme Court in **Hardip Singh's case (supra)** has laid down the proposition and have held as follows:-

“Question Nos.1 & III: Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

*A. In **Dharam Pal's case**, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused.*

Section 319 Cr.P.C. significantly uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the chargesheet.

In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No. II: Q.II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the

evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. IV: Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? 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?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.”

Reverting back to the instant case, the FIR (Annexure P1) which is a document first in point of time, clearly names the petitioner

Amritpal Singh alias Tinu along with others and further it has come that the husband of the complainant and the present petitioner were jointly running their business in Barnala and the in-laws were not happy with the articles of Istridhan and were often taunting, and physically and mentally torturing her. There is, as has been pointed out by learned State counsel, specific averment in the FIR that the husband and the brother-in-law in order to compel the complainant to bring ₹ 50,000/- have forcibly made her to take poison and for which she was admitted in a hospital and it is as a consequence of this intimidation, her father was forced to part with ₹50,000/- as demanded by the accused. She has further elaborated that this amount was used by her husband and the present petitioner Amritpal Singh alias Tinu. It is elucidated that the present petitioner, brother-in-law along with younger brother-in-law of the complainant gave beatings to her and thereafter intentionally shifted to Sunam with a view to save themselves from the rigor of the matrimonial cases. Thus, in the light of this initial stand of the complainant in the FIR, reiteration of her allegations in her testimony as PW2 and the fact that learned counsel for the petitioner could not pinpoint anything which could be detrimental to the case of the State, this Court on perusal of the impugned findings (Annexure P4), concurs with the observations that sufficient evidence has come on the record against the present petitioner in respect of these allegations. None of the ratios cited by learned counsel for the petitioner come to the aid of the petitioner on account of factual disparity.

Thus, exercising inherent powers under Section 482 Cr.P.C. is not called for as there is neither any manifest illegality nor perversity in the findings of the Court below, nor even could be brought to the notice of the Court and therefore, the present petition being without any merit stands dismissed.

(FATEH DEEP SINGH)
JUDGE

February 6, 2020
rps

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