

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

233

CRR-3429-2018

Date of Decision:23.01.2020

Sandeep Yadav

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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

**Present: Mr. Parminder Singh, Advocate,
for the petitioner.**

Mr. Gaganpreet Kaur, AAG, Haryana.

**Mr. Tapan K. Yadav, Advocate for
Mr. Jaivir Yadav, Advocate,
for respondent Nos.3, 4, 5 and 7.**

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present revision petition impugning the order dated 17.09.2018 passed by learned Additional Sessions Judge, Faridabad, whereby application filed by the complainant under Section 319 Cr.P.C., so as to summon the respondents as additional accused and to face trial in the case, was dismissed.

Power of attorney filed on behalf of respondent Nos.3, 4, 5 and 7 today in the Court, is taken on record.

On October 10, 2018 when this Court had issued notice in the case, notice was issued qua respondent No.3-Kuldeep son of Ram Dass only and in this manner, the present revision petition was deemed to have been

dismissed qua other additional accused sought to be summoned.

Learned counsel for the petitioner has argued that there are allegations against respondent No.3, so as to face trial in the case as the deceased Aarti whose marriage was solemnized with Pardeep on 07.05.2009 had died on 22.10.2017. The deceased and respondent No.3-accused sought to be summoned in the case were residing in the same house and therefore, he has committed the offence in collusion with the other co-accused. He refers to the statement of the complainant and his brother Manoj Yadav, wherein name of respondent No.3 as an accused in the evidence has been mentioned. He submits that in the FIR, there is allegation that sister of the complainant was murdered because of demand of more dowry and for not giving the car to the accused. He refers to the statement of Aarti(deceased) who appeared as a witness in dispute pending between respondent No.3-Kuldeep and his wife Laxmi to contend that they were staying together jointly in one house.

On the other hand, learned State counsel as well as counsel for respondent Nos.3, 4, 5 and 7 have argued that the deceased and Kuldeep-accused sought to be summoned were living separately though in one house, but in different portions. Moreover, marriage of the deceased and Pardeep was solemnized in the year 2009 and demand of car after more than eight years is too unrealistic.

Heard.

The police has found respondent No.3-accused sought to be summoned by the complainant as innocent. Even from the bare perusal of the FIR, there is no such specific allegation against respondent No.3 sought to be summoned. Summoning of an accused is a serious issue and Court

must be very cautious while passing such summoning order. In the absence of any specific allegation and noticing the fact that the marriage of deceased Aarti was solemnized with Pardeep on 07.05.2009, the demand of car after about eight years of marriage looks too unrealistic.

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

In view of the above, this Court finds that the petitioner has failed to adduce any material so as to summon the accused sought to be summoned in the case.

No ground to interfere in the well-reasoned impugned order dated 17.09.2018 passed by learned Additional Sessions Judge, Faridabad, is thus made out.

The present revision petition is accordingly dismissed.

January 23, 2020
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No