

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Revision No.248 of 2020 (O&M)

Date of Decision: 04.02.2020

Subhash Chand Sharma

...Petitioner (s)

Versus

State of Haryana

...Respondent(s)

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

Present:- Mr. Shailendra Sharma, Advocate
for the petitioner.

HARI PAL VERMA, J. (Oral)

The petitioner – Subhash Chand Sharma has filed the present revision petition challenging the order dated 18.10.2019 passed by Additional Sessions Judge, Narnaul, whereby the application filed by the complainant under Section 319 CrPC, so as to seek summoning of co-accused Radhey Shyam, Gyarsi Devi w/o Radhey Shyam and Nirmala Devi d/o Radhey Shyam, as additional accused, was dismissed.

Briefly stated, the deceased Ritu was married to accused Gajender @ Gautam on 28.02.2002 and out of this wedlock, two male children were born. But the accused were not satisfied with the dowry given in the marriage and therefore, during the years 2004, 2006 and 2010, the accused persons had given severe beatings to the deceased and the

matter was reported to the police, but case was not registered against the accused. On 05.09.2017, the accused persons again gave beatings to the deceased, which fact was disclosed by the deceased to the complainant on 06.09.2017. Again on 07.09.2017, the accused gave beatings to her to such an extent that she was hospitalized at Civil Hospital, Narnaul, from where, she was referred to PGI, Rohtak, where she died on 08.09.2017.

Learned counsel for the petitioner has argued that from the evidence of prosecution witnesses i.e. PW-1 Subhash Chand Sharma and PW-11 Pridarshi, it has come known that in addition to the present accused Gajender son of Radhey Shyam, who is already facing trial, summoning of other accused namely Radhey Shyam, Gyarsi Devi w/o Radhey Shyam and Nirmala Devi d/o Radhey Shyam is also necessary, as they had helped the accused-husband in killing deceased Ritu. At the time of her death, these accused persons were present. They all used to harass the deceased, which is sufficient for their conviction and therefore, they need to be tried along with the main accused. He has further argued that as per the post-mortem examination report of the deceased, marks of injury over the neck shows that the deceased was tortured soon before her death and the proposed accused, sought to be summoned, were present when the deceased died in her matrimonial home. Thus, summoning of these persons, as additional accused, is necessary.

I have heard learned counsel for the petitioner and perused the impugned order.

The complainant has filed the present application at a stage when list of prosecution witnesses was almost exhausted, as only one

witness remained to be examined. PW-1 Subhash Chand Sharma and PW-11 Pridarshi were duly examined in the case. PW-1 Subhash Chand Sharma has testified that after some time of the marriage, the accused Gajender @ Gautam (husband), Radhey Shyam (father-in-law), Gyarsi Devi (mother-in-law) and Nirmala Devi (sister-in-law) started harassing and torturing the deceased for bringing less dowry. They demanded one Bolero vehicle along with cash of Rs.5,00,000/- from her. However, this fact was not stated by the complainant in his application Ex.PW-1/D. When PW-1 Subhash Chand Sharma was confronted with this fact that he has not incorporated the facts that the accused had demanded one Bolero vehicle along with cash of Rs.5,00,000/- from the deceased, in his complaint, he has admitted that the application Ex.PW-1/D was scribed by him, but he realised his mistake and added that it was written under pressure of the police. Moreover, Dr. Naveen Yadav, PGIMS, Rohtak has opined that cause of death of the deceased was coronary artery disease i.e. complicated atherosclerosis. He has further added that the deceased had an injury over neck, which is suggestive sign of hanging. However, no external injury was reported on the person of the deceased in her post-mortem examination. The husband of the deceased, who is the main accused, is already being tried for offence under Section 306 IPC. Even otherwise, the marriage of the deceased was solemnised with the accused-husband on 28.02.2002 and the allegation of demand of dowry against father-in-law, mother-in-law and sister-in-law are quite unrealistic, as it is difficult to believe the allegation of demand of dowry after a gap of around 16 years of the marriage.

No doubt, this Court is fully empowered to summon a person, if on the basis of evidence, it appears to the Court that the person sought to be summoned has committed an offence, but it should be used very sparingly, only if compelling reasons exist for taking cognizance against other persons against whom action has not been taken. At the same time, summoning is a serious issue and has serious ramifications.

Hon'ble Supreme Court in the case of **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 the case of **Hardeep Singh v. State of Punjab 2014(3)**

SCC 92, the Apex Court has held as under:-

“106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if ‘it appears from the evidence that any person not being the accused has committed any offence’ is clear from the words “for which such person could be tried together with the accused.” The words used are not ‘for which such person could be convicted’. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused.

Therefore, having recourse to the judgments passed by the Apex Court, mentioned above, no interference is warranted into the impugned order dated 11.10.2019 passed by the court below.

Accordingly, the present revision petition is dismissed.

February 04, 2020
AK

(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No