

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

CRM-M-14977-2021

Date of decision : 24.09.2021

Sumit Chaudhary

..... Petitioner

versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Himmat Singh, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

The present petition has been filed impugning the order dated 18.01.2021 whereby, learned Additional Sessions Judge, Gurugram, dismissed the application filed under Section 319 Cr.P.C. by the complainant/petitioner for summoning the parents of the accused husband, Amit Kumar namely, Mahesh Kumar and Parkash Kaur in FIR No.294 dated 27.04.2017, under Sections 304-B, 498-A, 120-B of the Indian Penal Code, 1860 at Police Station DLF, Sector-29, Gurugram.

The complainant/petitioner, who is the author of the FIR, had filed the FIR wherein it has been alleged that he married his sister Himani to Amit Kumar on 04.02.2016. He alleged that his sister was working as Manager in OBC Bank. Soon after the marriage, Himani and her husband Amit Kumar started residing at House No.44, Rizwood State DLF, Phase-

IV, Gurgaon. It was alleged that Amit Kumar started harassing the sister of the complainant for dowry and his parents were also used to taunt his sister for dowry. It was informed by his sister several times to her parents on phone, however, the harassment kept on unabated. Finally, the situation being intolerable, she committed suicide by hanging herself on 26th April, 2017. As a result, the present FIR was registered. Initially, the FIR was registered under Sections 306/34 IPC which was later on converted to Section 304-B IPC. During investigation, the allegations were found to have been substantiated only against Amit Kumar, the husband. As the trial commenced, the petitioner-complainant appeared as PW-7 and deposed against the parents. On the basis of the same, present application under Section 319 Cr.P.C. was filed for summoning both the proposed accused i.e. Mahesh Kumar and Parkash Kaur to face the trial along with co-accused, Amit Kumar.

Learned Additional Sessions Judge after hearing, declined the application filed under Section 319 Cr.P.C. vide his order dated 18.01.2021. Aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

Learned counsel for the petitioner would submit that the complainant/petitioner had named both the respondents i.e. proposed accused categorically along with co-accused Amit Kumar. However, the investigating agency erroneously ignored both of them. It has been contended that the trial Court had wider jurisdiction to summon both the accused, however it miserably failed in appreciating the material on record and thus, the conclusion arrived at in declining the application, is totally unsustainable in the eyes of law. He has relied upon the judicial

precedents of the Constitution Bench of Hon'ble Supreme Court in Hardeep Singh Vs. State of Punjab and others, (2014) 3 SCC 92, and thus, prayed for setting aside the impugned order by allowing the application filed under Section 319 Cr.P.C. for summoning.

I have heard learned counsel for the petitioner and perused the material on record.

It is apparent that the marriage of the deceased Himani took place with Amit Kumar on 4th February, 2016. After the marriage, the couple started living in a rented accommodation in Gurgaon whereas, the parents were living separately from them.

On completion of investigation, challan was presented against Amit Kumar, husband. However, both the proposed accused were kept in column No.2. It is apposite to take into consideration that on the asking of the Court to the counsel for the petitioner regarding the status of the trial, he informed that out of 39 witnesses cited by the prosecution, only one witness remains to be examined by the trial Court which would show that the trial is virtually at its fag end. Looking into the provisions of Section 319 Cr.P.C. and in a plethora of judicial precedents, it has been settled that this power is an extraordinary power which cannot be used in a casual manner and the same has to be used sparingly.

The Hon'ble Supreme Court in Hardeep Singh's case (supra), has dealt with the issue in hand in a very exhaustive manner and held that 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 the satisfaction to an extent that the evidence if goes unrebutted, would lead to conviction. In the absence of the same, use of power under Section 319

Cr.P.C. is not attracted. However, perusal of the statutory provisions of Section 319(4) Cr.P.C. would show that in case of summoning of newly added accused, the trial would begin *de novo*. Looking into the facts and circumstances of the present case, it is evident that the occurrence in question took place in 2017. The matter was investigated and the trial is in progress since then. Both the proposed accused though were named in the FIR, however, the allegations were not substantiated during investigation. It is when the trial was in the advanced stage, the complainant deposed before the trial Court, and reiterated the allegations against both the respondents. Not only this, the trial Court observed that the deposition of PW-7 and PW-18 in the Court when compared with their statements recorded under Section 161 Cr.P.C. would be an improved version. Applying the test as held by the Apex Court in the Constitution Bench case (*supra*) to the present case, the application filed do not qualify to be entertained simply on the reiteration of the allegations with the improved version and would not be justiciable for summoning the proposed accused. The trial which is almost at the stage of its conclusion, cannot be allowed to be prolonged, on the basis of the allegations made in a cavalier manner. Resultantly, this Court finds no infirmity in the conclusion arrived at by the learned trial Court.

The petition being devoid of any merits is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

24.09.2021
m. sharma

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