

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(111)

CRR-450-2021

Date of Decision: 31.08.2021

Radhey Sham

--Petitioner

Versus

State of Haryana & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Kanwal Goyal, Advocate for the petitioner.

Mr. B.S. Virk, DAG, Haryana.

RAJESH BHARDWAJ.J (Oral)

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 revision petition has been filed impugning the order dated 21.01.2021, wherein the application filed under Section 319 Cr.P.C. by the complainant for summoning the parents and sister-in-law of the accused Mohit (husband) namely Makhan Lal, Kamla and Kavita as additional accused, has been dismissed by the learned Additional Judge, Gurugram.

The facts of the case are that the petitioner got registered the present FIR on the allegations that he has three daughter and two sons. His eldest daughter Mausam was married with Mohit on 8.2.2014 and he had given sufficient dowry in the marriage. After the marriage, his daughter was being harassed and beaten up for bringing less dowry by her husband namely Mohit, father-in-law namely Makhan Lal, mother-in-law Kamla and sister-in-law Kavita. On 28.10.2017, his daughter committed suicide in the

matrimonial home. After registration of the FIR, the investigation was carried out and upon completion of the same, the challan was presented only against husband Mohit whereas respondents no.2 to 4 were found innocent. Aggrieved by the same the complainant filed an application under Section 319 Cr.P.C. for summoning the above named three persons as additional accused. After hearing the parties, the learned Additional Sessions Judge, Gurugram declined the same vide impugned order dated 21.01.2021. Aggrieved by the same, the petitioner has approached this Court by filing the present revision petition.

Learned counsel for the petitioner has vehemently contended that the view taken by the learned Additional Sessions Judge, Gurugram is totally unsustainable in the eyes of law. He has relied upon various documents placed on record. He contends that the petitioner had specifically named the above mentioned persons in the FIR, which was registered on 28.02.2017. Counsel has drawn the attention of this Court to show the perversity in the impugned order that there was no demand of the Swift car, by placing reliance upon the application filed by the complainant on 29.04.2018 wherein the demand made by the respondents regarding Swift car was specifically mentioned. He has contended that the petitioner/complainant was examined as the 10th witness and hence the present application was filed immediately after examination of the complainant/petitioner. He has placed reliance on the judicial precedents pronounced by their Lordships in **Criminal Appeal NOS.298-299 of 2021** titled as **Sartaj Singh vs. State of Haryana & Anr. Etc.** decided on 15.03.2021.

I have heard learned counsel for the petitioner at length and gone through the records carefully.

It is apparent from the facts on record that the marriage in question had taken place on 8.2.2014 whereas the wife namely Mausam committed suicide on 28.10.2017. The petitioner, who is first informant got lodged the present FIR and has alleged that the deceased was being harassed and beaten up on account of bringing less dowry by her husband and respondents no.2 to 4. During investigation, the allegations were investigated and the Investigating Agency finally came to the conclusion that the allegations are substantiated only against the husband namely Mohit whereas respondents no.2 to 4 were found innocent. Learned trial Court had observed that the complainant/petitioner during his examination has made a number of improvements while deposing before it. It has been found that except mentioning the names of the proposed accused to be summoned under Section 319 Cr.P.C., no specific allegations regarding the demand of Swift car etc. were found to have been mentioned. From the close reading of FIR and statement recorded under Section 161 Cr.P.C., there were improvements found to have been made by the petitioner/complainant while appearing before the Court as PW-6. It has been further observed that the present application was filed by the complainant after examination of ten prosecution witnesses and not by the Public Prosecutor. As evident once the additional accused summoned under Section 319 (1) then as per the mandate of Section 319 (4) Cr.P.C. the proceedings in respect of such persons shall be commenced afresh. Witnesses have to be reheard from the beginning of the trial. The Hon'ble Supreme Court in Hardeep Singh Vs. State of Punjab & others, (2014) 2 SCC (Crl) 86 has

categorically settled the law, wherein it has been observed that the power under Section 319 Cr.P.C is an extraordinary power and hence the summoning under Section 319 Cr.P.C cannot be in a casual manner. It has been observed that the satisfaction drawn by the court for summoning the witnesses under Section 319 Cr.P.C should be more than the satisfaction which is required at the stage of framing of the charges. In the case in hand, though, the names of the proposed accused were there in the FIR, however, there were no specific allegations regarding demand of dowry in the initial version and after investigation the investigating agency found them innocent while presenting the challan. However, the complainant tried to improve his initial version by filing complaint dated 29.4.2018 to the Investigating Officer wherein the demand regarding the Swift car was mentioned, however, the same was filed after a gap of about 6 months from the date of registration of the FIR. Further after the examination of 10 prosecution witnesses the present application was filed by the complainant which would further result in delaying the trial as the denovo trial would commence qua the newly added accused as per mandate of Section 319 (4) Cr.P.C. The judgement cited by learned counsel for the petitioner is distinguishable in the facts and circumstances of the present case. In the case dealt by their Lordships the inquiry was carried out by the D.S.P on the basis of which the accused in that case were not charge sheeted and the same was ignored by their Lordships as it would have no evidentiary value as the concerned D.S.P was never the investigating officer. Whereas, in the present case respondents no.2 to 4 were found innocent after the investigation by the investigating officer. Further there was an improvement in the version given by the petitioner while entering in the witness box as

PW-6, which is evident when the same is compared with the initial version given by the petitioners.

Thus, in the facts and circumstances of the present case, the satisfaction of the court which is required to be more than the satisfaction at the time of framing of charge is not made out as per the law settled and thus, this Court finds no infirmity in the conclusion arrived at by the learned Trial Court and hence suffers from no illegality.

As a result, being devoid of any merit, present petition is dismissed.

(RAJESH BHARDWAJ)
JUDGE

31.08.2021

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No