

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

109

**CRR-1596-2021 (O&M)
Date of decision: 02.12.2021**

Bachitter Pal

.....Petitioner

Versus

State of Punjab and others

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Sarju Puri, Advocate for the petitioner.

MANJARI NEHRU KAUL, J. (ORAL)

By way of the instant revision petition, the petitioner has challenged order dated 28.10.2021 vide which the learned Sessions Judge, SBS Nagar has dismissed an application filed under Section 319 Cr.P.C. by the prosecution seeking summoning of respondents No.2 and 3 (father-in-law and mother-in-law of deceased Navjot) to face trial as accused.

Learned counsel for the petitioner inter alia contends that the marriage of the petitioner's daughter Navjot (hereinafter called deceased) was solemnized with accused Pardeep Kumar @ Deep i.e. son of respondents No.2 and 3 on 26.04.2020. Since the in-laws family of the deceased including the private respondents were unhappy with the dowry given at the time of marriage, she was subjected to grave physical and mental cruelty. It was further submitted that as the deceased was being tortured by her in-laws family, the petitioner along with his father-in-law Major Singh and Malkeet Ram visited the matrimonial home of the deceased and tried to bring them around by pacifying them. Learned counsel has submitted that though

subsequently the in-laws family kept calm for some time, however, on 06.12.2020, his son-in-law accused Pardeep i.e. son of respondents No.2 and 3 came and left the deceased at his house after asking them to arrange for Rs.50,000/-. Later, on the same evening, when accused Pardeep came to pick up the deceased, he misbehaved and used abusive language against both the petitioner as well as his wife i.e. the deceased for not being able to arrange a sum of Rs.50,000/-. Thereafter, accused Pardeep left with the deceased on his motorcycle for their village. Learned counsel for the petitioner has further submitted that on the following day itself, being fed up, the daughter of the petitioner i.e. the deceased hanged herself with her scarf and ended her life in her matrimonial home.

Learned counsel has vehemently argued that the Court below gravely erred in not appreciating that there were specific and serious allegations levelled against the accused including the private respondents which were reiterated by the complainant i.e. petitioner during trial when he stepped into the witness box as PW-1. Learned counsel also referred to the statement of Major Singh (father-in-law of the petitioner) recorded under Section 161 Cr.P.C. which too was on similar lines as the contents of the FIR in question as well as the deposition of the petitioner as PW-1. It was submitted that since a young life of 20 years had been lost on account of mental and physical cruelty inflicted by all the accused including the private respondents within 07 years of her marriage, presumption under Section 113-B of the Indian Evidence Act, 1872 would have to be drawn against all of them including the private respondents and thus the impugned order

vide which the trial Court had declined to summon the private respondents deserved to be set aside.

In support, learned counsel for the petitioner has placed reliance upon *Hardeep Singh Vs. State of Punjab and others : 2014(3) SCC 92* to urge that the trial Court failed to appreciate the facts and circumstances in their totality in as much as the statement of Major Singh recorded under Section 161 Cr.P.C. was ignored by the trial Court.

Heard learned counsel for the petitioner at length and perused the material on record.

Before proceeding further, it would be pertinent to observe that the power under Section 319 Cr.P.C. being discretionary, has to be exercised with extreme caution after giving due regard to the facts and circumstances of the case including any cogent and strong evidence which may come to the fore during trial.

Adverting to the case in hand, a perusal of the contents of the FIR reveals that no specific allegation was levelled by the petitioner with respect to the alleged harassment meted out to the deceased by the private respondents. No doubt, it was alleged that there was some harassment meted out soon after her marriage, however, it stood reflected in the FIR itself, that after the petitioner along with his father-in-law Major Singh and another person had visited the house of his deceased daughter, things had settled and calmed down in her matrimonial home. In fact, on perusal of the FIR in question it comes across that it was the son of the private respondents i.e. son-in-law of the petitioner (who is already facing trial), who had indulged in abusive

behaviour with both his deceased wife as well as the petitioner when he visited them one day prior to the occurrence as his demand of Rs.50,000/- had not been met by the petitioner. Unfortunately, on the following day itself, the deceased hanged herself to death. It is not the case of the petitioner that the private respondents were also present at the time when their son indulged in abusive behaviour on 06.12.2020 much less that it was at their instigation, the said demand of Rs.50,000/- was made. It would also be relevant to observe that even during his deposition as PW-1, the petitioner reiterated the same version as given at the time of registration of the FIR and did not depose anything more, other than what he had alleged against the private respondents earlier while lodging the FIR.

The Constitution Bench of the Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab and others : 2014(3) SCC 92*** while dealing with the provisions of Section 319 Cr.P.C. held as under:

"98. Power under Section 319 Cr.P.C. is a discretionary and an extra- ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

99. 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 un rebutted, 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."

Hence, in a nutshell, what flows from the law laid down in ***Hardeep Singh's case (supra)*** is that while summoning a person as an accused under Section 319 Cr.P.C., the evidence required would have to be much stronger than a mere likelihood of his involvement, and of a higher quality than what was employed while framing charges.

Still further, learned counsel for the petitioner had laid a great deal of stress on the statement of Major Singh recorded under Section 161 Cr.P.C. by urging that the trial Court failed to take into consideration the same while dismissing the application under Section 319 Cr.P.C. It would, however, not be out of place to observe that the aforementioned statement under Section 161 Cr.P.C. would fall outside the compass of 'evidence' as appearing in Section 319 Cr.P.C. It would be apposite to reproduce Section 319 Cr.P.C. which reads as under:-

"319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

On a minute perusal of the language used in Section 319 Cr.P.C., there can be no manner of doubt that the term 'evidence' would imply only evidence recorded before a Court of law and definitely not any material collected during investigation including statements made to a police officer. The reliance placed upon ***Hardeep Singh's case (supra)*** by the learned counsel, is totally misplaced and does not help his case at all in the wake of the following ratio laid down by the Hon'ble Supreme Court in ***Hardeep Singh's case (supra)*** itself, while dealing with the term 'evidence' as appearing in Section 319(1) Cr.P.C.:-

"69. Ordinarily, it is only after the charges are framed that the stage of recording of evidence is reached. A bare perusal of Section 227 Cr.P.C. would show that the legislature has used the terms "record of the case" and the "documents submitted therewith". It is in this context that the word 'evidence' as appearing in Section 319 Cr.P.C. has to be read and understood. The material collected at the stage of investigation can at best be used for a limited purpose as provided under Section 157 of the Evidence Act i.e. to corroborate or contradict the statements of the witnesses recorded before the court. Therefore, for the exercise of power under Section 319 Cr.P.C., the use of word 'evidence' means material that has come before the court during an inquiry or trial by it and not otherwise. If from the evidence led in the trial the court is of the opinion that a person not accused before it has also committed the offence, it may summon such person under Section 319 Cr.P.C.

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71. It is, therefore, clear that the word "evidence" in Section 319 Cr.P.C. means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the

Magistrate or the Court to decide whether power under Section 319 Cr.P.C. is to be exercised and not on the basis of material collected during investigation.

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80. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 Cr.P.C. The ‘evidence’ is thus, limited to the evidence recorded during trial.”

In the case in hand, during his deposition as PW-1, annexed as Annexure P-3, no doubt the petitioner reiterated all the allegations levelled in the FIR in question, however, no strong and cogent evidence was brought to the fore which would in any way persuade this Court to think otherwise and suspect the complicity of both the private respondents in the crime in question.

As a sequel to the above, the instant petition being devoid of any merit, is dismissed.

02.12.2021

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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