

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-63-2022
Reserved on 17.03.2022
Date of Decision: March 31, 2022

Komal ...Petitioner

Versus

State of Punjab and another ...Respondent

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Prabhjot S. Waraich, Advocate for the petitioner.

Mr. H.S. Multani, AAG, Punjab.

Mr. Gitesh Bhardwaj, Advocate for respondent No.2.

ANOOP CHITKARA, J.

FIR No.	Dated	Police Station	Sections
106	28.05.2015	Gobindgarh Mandi	341, 323, 506 & 34 IPC, 1860

Aggrieved by the issuance of summons after acceptance of application under section 319 Cr.P.C. filed by the complainant, who is none other than but father of the petitioner. The newly arrayed accused straightaway has come up before this Court by filing petition under Section 401 Cr.P.C.

2. Based on the information supplied by the complainant-Bal Kishan, police registered FIR as captioned above. The informant had stated that on 27.05.2015, when he was going on scooter, his daughter Komal who had entered in love marriage with Himanshu Dhiman, came from the opposite side in car and at that time two persons were sitting in the said car with Himanshu, hit his scooter and after that gave him beatings with sticks. He specifically stated that Himanshu gave beatings with sticks. After that he became unconscious and was taken to the hospital.

3. During investigation, the police did not find allegations against Komal to be truthful and did not launch prosecution against her. After that the prosecution filed an application under Section 319 Cr.P.C. seeking summons against Komal to face trial with the aforesaid FIR. Vide impugned order dated 02.12.2011 learned SDJM, Amloh allowed the said application and proceeded to summon the petitioner to face trial in the above mentioned FIR.

4. I have heard learned counsel for the parties and gone through the records.

5. Learned court was swayed with the reasons that under Section 173 Cr.P.C. in Court no explanation was given, vide which Komal not arrayed as an accused. Further in the examination of the complainant, he specifically mentioned Komal as one of the accused. Thus, on the said reasoning, the learned trial Court summoned the petitioner. The petitioner is daughter of the complainant. She had entered into love marriage against the wishes of her family. After that she had written a complaint to SSP Fatehgarh seeking protection for her life and liberty. A copy of this letter is annexure as Annexure P-1. It is not disputed by the State as well as by the complainant. In the said protection letter, it is specifically mentioned about the marriage that it has been cohabited. The allegations were made against the complainant that he was unhappy with the same.

A perusal of the FIR reveals that initially the car hit the scooter of the complainant. Komal was sitting in the car as per the complainant. After that the scooter was hit two unknown persons who had given beatings to the complainant with the sticks. When the complainant did not utter a word against Komal then his daughter also gave the beatings to him. Thus, merely because she was present in the car would not mean that she had common intention of beating her own father and furthermore, the incident had started after the car had hit the scooter. Thus, if the FIR is taken on its face value still no offence is made out against Komal. Subsequent conduct of the complainant exaggerating his version would not make a second thought so as to summon the petitioner. Initially at the time of the FIR the complainant was not in the fit mental.

In the peculiar facts and circumstances, the order issuance summons did not taken in the consideration the fact of prior enmity because of love marriage and the fact that no act was attributed to the petitioner. Consequently, impugned order is set aside and bails bonds are discharged.

In Ramesh Chandra Srivastva v. State of UP, AIR 2021 SC 5107, Hon'ble Supreme Court holds,

[7] While this Court has approved of relying upon deposition which has not suffered cross examination for the purpose of invoking Section 319 Cr.P.C., it is relevant to note the standards which have been fixed by this Court for invoking the power under Section 319 Cr.P.C. The statement of law in this regard is contained in paragraphs 105 and 106 of Hardeep Singh (supra):

105. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary 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.

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 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."

[8] After hearing learned counsel for the respondents, who, no doubt, point out that the deposition of the second respondent as given by her, would suffice in law for the Court to invoke the power under Section 319 Cr.P.C., we are of the view that the matter must be reconsidered. We say this for the following reason:

[9] The test as laid down by the Constitution Bench of this Court for invoking power under Section 319 Cr.P.C. inter alia includes the principle that only when strong and cogent evidence occurs against a person from the evidence the power under Section 319 Cr.P.C. should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by this Court, is one which is more than prima facie case which is applied at the time of framing of charges.

Petition allowed in aforesaid terms. All pending applications, if any, stand disposed.

(ANOOP CHITKARA)
JUDGE

March 31, 2022
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Whether speaking/reasoned: Yes
Whether reportable: No.