

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.1820 of 2019 (O&M)

Date of Decision:08.03.2022

(Heard through VC)

Manjit Kaur and others

...Petitioners.

Vs

State of Punjab and another

...Respondents.

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Chandan Singh Rana, Advocate
for the petitioners.

Mr. Sandeep Singh Deol, DAG, Punjab.

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JAISHREE THAKUR J.

1. The petitioners herein are praying for quashing of the FIR No.6 dated 30.07.2014 registered under Sections 420, 467, 468, 471, 506, 120-B IPC at Police Station, NRI, Ludhiana, District Ludhiana and the order dated 17.07.2017 passed by the Judicial Magistrate 1st Class, Jagraon whereby the petitioners have been summoned to face trial under Section 319 Cr.P.C. on the ground of false implication.

2. In brief, the facts are that the aforesaid FIR was registered at the behest of Gurpreet Singh Dhaliwal son of Sardar Atma Ram on the allegation that he knew Gurpreet Singh @ Raju, who stated that he knew a girl namely Amarjit Kaur residing in Canada and his relatives were in search of a boy for her, as she had taken divorce from her husband. The said Gurpreet Singh @ Raju assured the complainant and his parents that in case a sum of Rs.40 lakhs is given, he would be taken abroad and got married to the said Amarjit Kaur. The complainant was made to talk to a relative of Amarjit Kaur namely Anita, who assured on similar lines. The matter was settled for a sum of Rs.35 lakhs and a

ring ceremony was solemnized between the complainant and Amarjit Kaur on 03.05.2006 in the presence of Raju, Anita, Amarjit Kaur's relatives and parents of the complainant. Thereafter, a telephonic call was arranged with Manjit Kaur, Gurcharan Kaur and Paramjot Singh in Canada, who stated that balance amount of Rs.30 lakhs was to be given before marriage. All wedding arrangements were made and two days before the marriage was to be solemnized i.e. on 10.05.2006, amount of Rs.30 lakhs was given to the accused persons. Even after four years of marriage, the complainant was not taken to Canada. Thereafter, the complainant came to know that Amarjit Kaur did not take divorce from her husband and the divorce papers shown to the complainant by Raju, Anita etc. were fabricated. The details of various payments made to Amarjit Kaur were given in FIR. Several requests were also made to Amarjit Kaur and her family members to arrange for a visa or return the money given to them but the needful was not done, which has resulted in registration of the FIR.

3. Learned counsel appearing on behalf of the petitioners herein would contend that allegations as levelled in the FIR were investigated and the petitioners herein were found to be innocent, as they were not present in India at the time when the marriage was solemnized between the complainant and Amarjit Kaur. On this ground, the challan was not presented against them. It is contended that the trial court has summoned the petitioners as additional accused without any cogent reasons. Moreover, the said Gurpreet Singh @ Raju and Anita against whom there were specific allegations have been found to be innocent by the trial court. It is submitted that the order passed by the trial court summoning the petitioners herein as additional accused is not sustainable, as there is not an iota of evidence available that any amount was paid to them. Counsel for the petitioners would rely upon the report filed under Section 173 Cr.P.C. wherein there is a finding that the petitioners herein did not attend the

marriage. He would also rely upon the judgments rendered by the Hon'ble Apex Court in ***Hardeep Singh Vs. State of Punjab and others (2014) 3 SCC 92*** and ***Brijendra Singh and others Vs. State of Rajasthan (2017) 7 SCC 706*** to argue that there has to be strong evidence available before the Court to summon a person as an additional accused under Section 319 Cr.P.C. The complainant herein has abused the process of law by implicating the petitioners herein in the aforesaid FIR and therefore, prays for quashing of the same as well as the impugned order dated 17.07.2017 passed by the JMIÇ, Jagraon.

4. Learned counsel appearing on behalf of the respondent-State would submit that though the petitioners herein were found innocent vide enquiry report dated 15.01.2015 submitted by the DSP (Investigation) NRI Wing, Phase-7, Mohali and Challan under Section 173 Cr.P.C. was not presented against them, however, the trial court has rejected the said report and after appreciating the material available on record, has rightly summoned the petitioners under Section 319 Cr.P.C. to face trial. Therefore, he prays for dismissal of the instant petition.

5. I have heard learned counsel for the parties and have perused the paper book.

6. The law is now well settled as regards summoning a person as an additional accused under Section 319 Cr.P.C. The power to summon a person as an additional accused is undisputed, but the same has to be exercised sparingly, with caution and to be exercised in order to ensure that the culprit does not get away. In the judgment rendered in ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92***, the Constitution Bench of the Supreme Court has held:

“105. Power under Section 319 CrPC 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.PC. In Section 319 Cr.PC 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.PC to form any opinion as to the guilt of the accused.”(emphasis supplied).*

7. The Supreme Court, in **Brijendra Singh and others vs State of Rajasthan** (supra) while summing up the ratio as laid down in *Hardeeps Singh’s* case (supra) has held:

“Power under [Section 319 Cr.P.C.](#) can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some ‘evidence’

against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The 'evidence' herein means the material that is brought before the Court during trial. In so far as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilized for corroboration and to support the evidence recorded by the Court to invoke the power under [Section 319](#) Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under [Section 319](#) Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity."

8. In the instant case, the plea of the petitioners is that they were not present in India at the time the marriage was solemnized between the complainant and Amarjeet Kaur. The matter has been investigated in this regard and the complainant has not been able to produce anything on the record to the contrary. The statement recorded in court is a verbatim the contents of the FIR. Even in the FIR there is no mention of any money being handed over to the petitioners, other than stating that there was a telephone call from Canada asking for the money to

be given. The trial court has exonerated Raju and Anita, against whom there were direct allegations of introducing the complainant with Amarjeet Kaur and duping him into marrying her without informing about her marital status. The power to summon a person as an additional accused has to be exercised only where strong and cogent evidence occurs against a person from the evidence led before the Court. No evidence has been produced in the instant case.

9. Consequently, the impugned order summoning the petitioners to face trial is not sustainable and is, therefore, set aside.

(JAISHREE THAKUR)
JUDGE

March 08, 2022
Pankaj*

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