

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

CRM-M-2758-2019

Date of Decision: 8.7.2022

Surinder Singh and another

..... Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Ms. Pooja Chopra, Advocate, for the petitioners.

Mr.Rakeshinder Singh Sidhu, AAG, Punjab.

Mr. Jatinder Pal Singh, Advocate, for respondent No.2.

Rajesh Bhardwaj, J. (ORAL)

Petitioner has approached this Court by way of filing petition under Section 482 Cr.P.C. praying for quashing of order dated 12.7.2018 passed by the learned JMIC, Guruharshai, District Ferozepur, whereby, the petitioners were summoned under Section 319 Cr.P.C. and order dated 14.11.2018 passed by the learned Additional Sessions Judge, Ferozepur, whereby, the revision filed by the petitioners challenging the order dated 12.7.2018 was dismissed.

It has been contended by learned counsel for the petitioners that as per facts of the case respondent No.2-Pooja Rani was married with Gurpreet Singh on 08.01.2010. After the marriage, some matrimonial discord took place between the husband and wife and on account of the same respondent No.2 filed FIR No.118 dated 9.8.2017, under Sections 498-A, 406, 341, 506, 323 IPC, at Police Station Guruharsahai. Learned counsel for the petitioners submits that the matrimonial discord took place between the husband and wife on account of adamant attitude of respondent No.2 and hence, she deserted the matrimonial home and started living

separately. She submits that the FIR in question was lodged on the basis of false and frivolous allegations and family members & other relatives were maliciously roped in by respondent No.2 only to harass them. She submits that both the petitioner before this Court are maternal uncle and maternal aunt of the complainant-respondent No.2 and were not even remotely concerned with the matrimonial affairs of the complainant. She submits that both the petitioners are resident of different village and have no occasion whatsoever in causing harassment or cruelty as alleged by the complainant in the FIR. She submits that the allegations in the FIR were thoroughly enquired into by the senior official i.e. the Deputy Superintendent of Police, SD Guruharsahai and on the conclusion of the same, they were found to be false and frivolous as the allegations levelled by the complainant were not substantiated during investigation. The Investigating Agency declared both the petitioners innocent at the time of filing challan under Section 173 Cr.P.C., hence, both of them were kept in column No.2. She has drawn the attention of this Court to the allegations made by the complainant against the petitioners, wherein, it was alleged that the petitioner slapped the complainant, which hit on her both ears. She submits that both the petitioners were rightly declared innocent after thorough enquiry and the challan was presented only against Gurpreet Singh i.e. the husband of the complainant. She submits that the complainant was examined by the learned trial Court during the course of trial and she reiterated the bald allegations levelled in the FIR before the trial Court and hence, on the basis of the same, she filed application under Section 319 Cr.P.C. praying for summoning of both the petitioners and her parents-in-law to face the trial.

The learned Court below illegally accepted the same and thus, drawn a wrong conclusion in summoning the petitioners vide its order dated 12.7.2018. She vehemently contends that aggrieved by the order dated 12.7.2018 passed by the learned trial Court, the petitioners approached the Court of learned Additional Sessions Judge, Ferozepur by way of filing revision petition. She submits that the learned revisional Court also fell in error in not appreciating the law settled for summoning the additional accused under Section 319 Cr.P.C. and thus, illegally dismissed the revision petition filed by the petitioners. Learned counsel for the petitioners has contended that power under Section 319 Cr.P.C. is extraordinary in nature and as per the law settled by Hon'ble the Supreme Court in Hardeep Singh vs. State of Punjab and others, (2014) 3 SCC 92, the Court cannot summon the additional accused in a mechanical manner. She submits that the petitioners are the distant relatives of the complainant and had no concern with the personal life of the complainant, however, the petitioners were named in the FIR only to cause maximum damage to the in-laws family and hence, the petitioners were falsely roped in. She has submitted that senior official of the rank of DSP also enquired into the same and found no truth in the allegations levelled by the complainant against the petitioners, hence, the petitioners were declared innocent. She has submitted that Hon'ble Supreme Court has laid down time and again that Court should use its power under Section 319 Cr.P.C. sparingly in an exceptional circumstances. She has submitted that for summoning the proposed accused under Section 319 Cr.P.C., the Court is not only expected to proceed on the basis of the *prima facie* satisfaction drawn, however, the same should be strong enough

for exercising its jurisdiction under Section 319 Cr.P.C. However, in the facts and circumstances of the present case, there was no *prima facie* case made out against the petitioners and hence, both the Courts below have fallen in error in summoning the petitioners to face the trial alongwith the co-accused. She submits that the allegations are general, vague and omnibus in nature. She submits that the view taken by both the Courts below is against the law settled by the Hon'ble Supreme Court and thus, the same deserves to be set aside.

Learned counsel for respondent No.2 has opposed the submissions made by learned counsel for the petitioners and submitted that the complainant was harassed by the accused on account of demand of dowry. He has submitted that there were specific allegations of causing harassment, beating, and demanding dowry from the complainant by all the accused, however, the Investigating Agency did not investigate the matter in a free and fair manner and thus, illegally declared the petitioners innocent. He submits that during her examination before the trial Court, the complainant duly supported her initial version and hence, the trial Court rightly summoned the petitioners under Section 319 Cr.P.C. He has submitted that the learned revisional Court has rightly dismissed the revision filed by the petitioners as the same was in accordance with the law settled. He has submitted that there are concurrent findings against the petitioners and thus, the petition filed by the petitioners is without any merit.

Learned State counsel has also submitted that there are concurrent findings against the petitioners, hence, there is no illegality committed in

summoning the petitioners under Sections 319 Cr.P.C.

I have heard learned counsel for the parties and perused the record.

Admitted facts of the case are that the marriage of the complainant took place with Gurpreet Singh on 08.01.2010. After the marriage, matrimonial discord took place between husband and wife and as a result of the same, the present FIR was lodged against the husband and co-accused including the petitioners. Admittedly, the petitioners are the maternal uncle (mama) and maternal aunt (mami) of the complainant, who are living in different village. From the perusal of the FIR, the allegations against both the petitioners were, having given slaps to the complainant. The allegations have been duly enquired into by the senior officer of the rank of DSP and it was concluded after a thorough enquiry that the allegations against all the accused except the husband-Gurpreet Singh were without any substance. Resultantly, the challan was presented only against the husband Gurpreet Singh. The complainant reiterated her allegations before the learned trial Court, which was the only basis for summoning the petitioners under Section 319 Cr.P.C. The allegations levelled against the petitioners were already found to be false and frivolous and thus, there was no fresh evidence before the trial Court necessitating summoning the petitioners. Hon'ble the Supreme Court in the law settled by the Constitutional Bench in Hardeep Singh's case (supra) has held that the satisfaction of the Court against the proposed accused for summoning him/her to face the trial should be more than required at the time of framing of charge. Relevant paras of the same are reproduced 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.”

From facts and circumstances of the present case when weighing on the anvil of the law settled, it is apparent that there was no material before the trial Court, which could be more than *prima facie* case made out against the petitioners. Hon'ble Supreme Court has held that the Court should refrain from exercising its power under [Section 319 Cr.P.C.](#) in a mechanical manner. It has been held that power under [Section 319 Cr.P.C.](#)

should be used sparingly in exceptional circumstances.

Weighing the facts and circumstances of the present case on the anvil of law settled by the Hon'ble Supreme Court, this Court is of the opinion that both the Courts below have fallen error in summoning the petitioners under Section 319 Cr.P.C. and directing them to face trial alongwith the main accused already facing trial. Summoning of the petitioners would be nothing but an futile exercise and would defeat the ends of justice. Resultantly, the present petition is allowed and the order dated 12.7.2018 and 14.11.2018 passed by the Courts below are set aside.

(RAJESH BHARDWAJ)
JUDGE

8.7.2022
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No