

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

104

CRR No.472 of 2022 (O&M)

Date of decision:05.04.2022

Navjot Kaur alias Jyoti

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present:- Mr.H.P.S.Rahi, Advocate
for the petitioner.

Mr. Amandeep Singh Gill, Sr. DAG, Punjab.

SUVIR SEHGAL, J.(Oral)

CRM No.12686 of 2022

Application is allowed as prayed for.

Exemption as sought, is granted.

CRM No.12688 of 2022

Application is allowed as prayed for.

Annexures P-7 to P-11 are taken on record.

CRR No.472 of 2022 (O&M)

Instant petition has been filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short “the Code”) challenging order dated 08.02.2022 passed by learned Additional Sessions Judge, Gurdaspur by which the petitioner alongwith two other co-accused

have been summoned as additional accused under Section 319 of the Code for facing trial in FIR No.15 dated 22.02.2021 lodged at P.S. Kahnuwan, Gurdaspur for offence Section 304-B of Indian Penal Code, 1860 (Annexure P-1).

Version of the prosecution is that FIR (Annexure P-1) has been registered on the statement of Narinder Kaur on the allegation that her daughter Gurmeet Kaur was married to Daljit Singh son of Gurdial Singh on 22.01.2020 and she gave huge dowry at the time of marriage as per her financial capacity, but her husband, in-laws Gurdial Singh and Kashmir Kaur, sisters-in-law Kamaljit Kaur and Navjot Kaur @ Jyoti (present petitioner), who is unmarried began to torment and harass her daughter. They started demanding Rs.2.00 lacs as they wanted to send Daljit Singh abroad. When this demand was brought to the notice of the complainant and her husband, they expressed their inability to meet the same and the matter was compromised in the presence of relatives. On 20.02.2021, complainant received a telephonic call from her daughter Gurmeet Kaur that she is very disturbed and that she does not want to live any more. Complainant assured her full support and went to her matrimonial home the next day, where she found the dead body of her daughter under a blanket on a bed and her *chunni* hanging from the ceiling fan. She came to know that her daughter had committed suicide. Being deeply disturbed at that time, she did not immediately report the incident to the police and lodged the FIR on the next day.

During the probe, Investigating Agency collected material against the accused, Daljit Singh and his father Gurdial Singh and presented the final report (Annexure P-7) under Section 173 of the Code against them. Co-accused, Kashmir Kaur, Kamaljit Kaur and Navjot Kaur @ Jyoti (present petitioner) were found innocent and a separate zimni was recorded on 17.06.2021 (Annexure P-4). During the course of evidence, the complainant stepped into witness box as PW1 and reiterated the allegations levelled in the FIR. An application was moved by the prosecution to summon the left out accused as additional accused, which has been allowed, vide order impugned herein.

Counsel for the petitioner urges that the petitioner is the cousin sister-in-law of the deceased and she has been wrongly described as daughter of Gurdial Singh, whereas she is the daughter of Kuldeep Singh and resides separately. Still further, he submits that once the Investigating Agency came to the conclusion that the petitioner is innocent, the Trial Court has gravely erred in summoning her as an additional accused under Section 319 of the Code without there being any fresh evidence on the record.

However, State counsel upon instructions from ASI Jagdish Singh has opposed the petition and supported the impugned order.

Counsel for the parties have been heard and the material available on the record as well as the deposition of the complainant (Annexure P-5), who stepped into witness box as PW1, has been perused.

Before coming to the factual aspect, it is necessary to examine the case law. Hon'ble Supreme Court in **Manjeet Singh Vs. State of Haryana and others 2021(4) RCR (Criminal) 25**, after summarizing the case law on the basis of the judicial precedents, has laid down parameters for the Court to invoke the power under Section 319 of the Code and has held as below:-

“13. The ratio of the aforesaid decisions on the scope and ambit of the powers of the Court under [Section 319 Cr.P.C, 1973](#) can be summarized as under:

(i) That while exercising the powers under [Section 319 Cr.P.C, 1973](#) and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;

(ii) for the empowerment of the courts to ensure that the criminal administration of justice works properly;

(iii) the law has been properly codified and modified by the legislature under the [Cr.P.C.](#) indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;

(iv) to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;

(v) where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial;

(vi) Section 319 Cr.P.C.,1973 allows the court to proceed against any person who is not an accused in a case before it;

(vii) the court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency;

(viii) [Section 319](#) Cr.P.C.,1973 is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial;

(ix) the power under [Section 319\(1\)](#) Cr.P.C., 1973 can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of [Sections 207/208](#) Cr.P.C, committal, etc. which is only a pre-trial stage intended to put the process into motion;

(x) the court can exercise the power under [Section 319](#) Cr.P.C., 1973 only after the trial proceeds and commences with the recording of the evidence;

(xi) the word “evidence” in [Section 319](#) Cr.P.C., 1973 means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents;

(xii) it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under [Section 319](#) Cr.P.C.,1973 is to be exercised and not on the basis of material collected during the investigation;

(xiii) if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under [Section 319](#) Cr.P.C.,1973 and can proceed against such other person(s);

(xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under [Section 319](#) Cr.P.C., 1973 can be exercised;

(xv) that power under [Section 319](#) Cr.P.C.,1973 can be exercised even at the stage of completion of examination-in-chief and the court need not has to wait till the said evidence is tested on cross-examination;

(xvi) even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of [Section 319](#)

Cr.P.C.,1973 and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses);

(xvii) while exercising the powers under [Section 319 Cr.P.C.,1973](#) the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.”

The facts of the present case have to be examined in the above background. An examination of the complaint shows that the petitioner alongwith other co-accused had been harassing and pressurizing the deceased for bringing more dowry. In particular, the deceased was being forced to bring Rs.2.00 lacs from her parents for sending Daljit Singh abroad. The Investigating Agency despite having recorded the statements of some of the independent witnesses regarding the accusation of harassment of the deceased at the hands of petitioner, which is apparent from the perusal of the zimni (Annexure P-4), has chosen to ignore the statements and for reasons best known to it and has given a clean chit to the petitioner. The Court is not expected to remain a silent spectator in a case when sufficient material has come on the record which hints at the complicity of the petitioner in the crime. As to whether the petitioner is a close relative of the deceased or a distant one and as to whether she is staying in same house

or in another locality of the same village, are all matters to be tested by the Trial Court during the course of the trial.

Keeping in view the totality of the facts and circumstances of the case and the judicial pronouncement, this Court does not find any illegality or perversity in the order passed by the Trial Court. As such the instant petition, which sans merit, is hereby dismissed.

Needless to say, nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case and the Trial Court shall proceed and conclude the trial on the basis of the evidence led before it.

April 05, 2022
savita

(SUVIR SEHGAL)
JUDGE

Whether Speaking/Reasoned	Yes
Whether Reportable	Yes