

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(204)

CRM-M-17149-2017

Date of Decision: 20.04.2022

Priyanka

--Petitioner

Versus

State of Haryana & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Namit Sharma, Advocate for the petitioner.

Mr. Neeraj Poswal, A.A.G., Haryana.

Mr. Ashwani Talwar, Advocate for respondents no.2 & 3.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 482 Cr.P.C praying for setting aside the impugned order dated 11.3.2016 passed by learned CJM, Panipat, whereby an application filed by the petitioner under Section 319 Cr.P.C has been dismissed as also the impugned order dated 17.1.2017 passed by the learned Addl. Sessions Judge, Panipat, whereby the revision filed has been dismissed.

As per facts of the case, present FIR was lodged by the petitioner Priyanka. The sum and substance of the allegations in the FIR is that she was married with Sandeep in the year 2005. She was divorced in the year 2012. Thereafter she performed second marriage with Sanjay Bhardwaj which was done through matrimonial advertisements published in Punjab Kesari dated 16.6.2017. After the marriage for some time she was kept properly by the husband but thereafter her sister-in-law Shikha wife of Amit Bhardwaj started harassing her on account of bringing insufficient dowry. Her father-in-law Ashok Bhardwaj, husband Sanjay Bhardwaj and sister-in-law Shikha Bhardwaj asked her to go back to her parental home

and bring more dowry. It was alleged that the complainant was repeatedly being harassed and pressurized by all the above named three accused on account of demand of dowry. Having no alternative she finally lodged the present FIR.

After registration of FIR the investigation commenced. The allegations against father-in-law Ashok Bhardwaj and sister-in-law Shikha Bhardwaj were not substantiated and hence they were kept in column no.2, however, the challan was filed only against the husband i.e. Sanjay Bhardwaj. The charges were framed and learned Trial Court took cognizance of the offence. On the commencement of trial the complainant was examined as PW-2, wherein she reiterated the allegations as made in the FIR against both the co-accused. On the basis of the same, an application under Section 319 Cr.P.C had been filed for summoning co-accused Ashok Bhardwaj and Shikha Bhardwaj to face trial along with Sanjay Bhardwaj. Learned Trial Court after hearing the parties declined the same vide order dated 11.3.2016. Aggrieved by the same petitioner filed revision against the impugned order dated 11.3.2016 in the court of learned Addl. Sessions Judge, Panipat. After hearing the parties learned Addl. Sessions Judge, Panipat dismissed the revision petition vide order dated 17.1.2017 and thus upheld the view taken by the learned Trial Court.

Learned counsel for the petitioner has vehemently contended that the view taken by both the courts below is totally unsustainable in the eyes of law. Counsel submits that the complainant has specifically levelled allegations of harassment and cruelty against all the three accused i.e. husband, father-in-law and sister-in-law. He submits that both the co-accused were illegally kept under column no.2 by the investigating agency.

Counsel submits that the complainant while appearing as PW-2 before the

Trial Court has again reiterated the allegations and thus there was no occasion for the courts below to decline the prayer made by the petitioner for summoning both the co-accused to face trial. Counsel submits that the court has ample power under Section 319 Cr.P.C to summon the co-accused against whom allegations are there for having committed the offence.

On the other hand, learned counsel appearing for respondents no.2 and 3 has vehemently opposed the submissions made by counsel for petitioner. He submits that the allegations levelled against respondents no.2 and 3 are false and frivolous. He submits that a fair and thorough investigation was conducted in the FIR and hence the investigating agency has rightly exonerated both the respondents as allegations against both of them were not found to have been substantiated. He further submits that the power under Section 319 Cr.P.C cannot be used mechanically and has to be used sparingly and thus both the courts below have rightly declined the summoning of respondents no.2 and 3 under Section 319 Cr.P.C.

I have heard learned counsel for the parties at length and have gone through the record carefully.

In all there were three accused in the FIR lodged by the petitioner-complainant. A thorough investigation was carried out and on completion of the same challan was presented only against the husband, whereas both respondents no.2 and 3 were found to be innocent. The complainant while appearing as PW-2 before the Trial Court has reiterated the allegations against both the respondents and thus filed an application under Section 319 Cr.P.C for summoning of both respondents no.2 and 3. Both the courts below appreciated the statutory provisions and the law applicable and thus found no justification in summoning the proposed

accused persons and hence declined the same. For the decision of the case in hand the appreciation of the statutory provisions under Section 319 Cr.P.C are most relevant. Section 319 Cr.P.C 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.”*

The Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab and others, 2014(1) RCR (Criminal) 623*** 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."

It has been held by the Hon'ble Supreme Court that the power of summoning under Section 319 Cr.P.C. is an extraordinary power which cannot be used in a cavalier manner and the same has to be used sparingly. The satisfaction of the Court for summoning the additional accused under Section 319 Cr.P.C. should be more than the satisfaction required for framing of the charge. The facts and circumstances of the present case when tested on the anvil of settled law would fail to qualify for accepting the application filed under Section 319 Cr.P.C.

In the case in hand, though, the allegations were there against three persons, however, on conclusion of the investigation no material was found against respondents no.2 and 3. Besides this there was no fresh evidence against these respondents and hence the view taken by both the courts below was legally justified.

Weighing the facts and circumstances of the case on the anvil of the law settled by Hon'ble Supreme Court, this Court finds no infirmity in the conclusion arrived at by both the courts below and hence the petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

20.04.2022

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No