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

CRR-739-2019

Date of Decision: May 17, 2022

Ganga Ram

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Tanmoy Gupta, Advocate, for the petitioner.
Mr.Neeraj Poswal, AAG, Haryana.
Mr.Kunal Dawar, Advocate, for respondent Nos.2 to 4.

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RAJESH BHARDWAJ, J.(ORAL)

The petitioner/complainant has approached this Court impugning the order dated 28.02.2019 vide which learned Additional Sessions Judge, Faridabad, has dismissed the application dated 16.02.2019 filed by him under Section 319 Cr.P.C. for summoning the additional accused, namely, Samma Praveen (respondent No.2), Chandni (respondent No.3) and Asmeen (respondent No.4).

As per the facts of the case, daughter of the petitioner, namely, Rajni performed the love marriage with Nafees @ Sahil. It was an inter-religion marriage. The in-laws of Rajni, after the marriage, started harassing her on account of demand of dowry. She was given physical beatings as well. As a result of the same, she committed suicide on 26.07.2018. FIR in question was lodged by the petitioner. After the investigation, the challan was presented, however, respondent Nos.2 to 4 were declared innocent. On the commencement of the trial, the petitioner was examined as PW2 wherein he reiterated the allegations against respondent Nos.2 to 4. As a result, the

application under Section 319 Cr.P.C was filed for summoning respondent Nos.2 to 4 to face trial alongwith the co-accused. Learned trial Court, after hearing the parties, declined the same vide its order dated 28.02.2019. Aggrieved by the same, the petitioner has impugned the order dated 28.02.2019 by way of present revision petition.

Counsel for the petitioner has vehemently contended that learned trial Court has failed to appreciate the evidence on record and hence, drawn a wrong conclusion in declining the application filed under Section 319 Cr.P.C.. He submits that the petitioner is the father of the deceased and has lodged the FIR with specific allegations of cruelty and harassment caused to the deceased by all these respondents which persuaded her to take the extreme step. He submits that the Investigating Agency intentionally declared these respondents innocent though there was ample of evidence on record. He further submits that petitioner while deposing before the trial Court as PW2 reiterated the allegations against all the three respondents and hence application under Section 319 Cr.P.C. was rightly filed for summoning the respondents. He submits that learned trial Court has failed to appreciate the law settled on the point in issue. He submits that the Court has ample power under Section 319 Cr.P.C. to summon a person for the offence which he appears to have committed. He submits that the view taken by the trial Court in declining an application under Section 319 Cr.P.C. is totally unsustainable in the eyes of law and thus deserves to be set aside.

Learned counsel for the respondents has vehemently opposed the contention raised by learned counsel for the petitioner and stated that the learned trial Court has rightly declined the prayer made in the application

under Section 319 Cr.P.C.

Heard.

Admittedly, the marriage of the deceased and Nafees @ Sahil was a love marriage. On her committing suicide, the petitioner, who is father of the deceased, lodged the FIR. The allegations levelled in the FIR against respondent Nos.2 to 4 were general in nature. Respondent Nos.2 to 4 are the married sisters-in-law of the deceased. There were general allegations regarding causing harassment to the deceased. A thorough investigation was carried out and all the respondents were declared innocent by the Investigating Agency at the time of presentation of the challan. However, the petitioner while entering into the witness box as PW2 deposed about causing harassment to the deceased by the respondents. Learned trial Court had appreciated the complete facts and circumstances and the law applicable in this case and finally dismissed the same. For dealing with the issue in question, the appreciation of Section 319 Cr.P.C. is relevant, which reads as under:-

“Section 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 subsection (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.”

As per the law settled by Hon'ble Apex Court in Hardeep Singh vs State of Punjab 2014(3) SCC 92, for summoning an accused under Section 319 Cr.P.C., the evidence against him should be more than the prima facie as required for framing of the charge but short of satisfaction to an extent that the evidence on record if goes un rebutted, the same would lead to conviction, relevant paras of said case read 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 is apposite to note that the application in question has been filed by the petitioner when the trial Court had already recorded the statement of accused under Section 313 Cr.P.C. This would reflect that the trial was virtually at the fag end when the petitioner had chosen to file the application under Section 319 Cr.P.C. The Court cannot ignore the fact that provisions of Section 319 Cr.P.C. cannot be invoked in a cavalier manner. The Court cannot invoke its jurisdiction under Section 319 Cr.P.C. when it is apparent that the application has been filed with a clandestine motive of delaying the trial.

Applying the facts and circumstances of this case on the anvil of the law settled by Hon'ble Apex Court in Hardeep Singh's supra, this case does not qualify for any interference in the order under challenge by this Court.

Resultantly, the present petition being devoid of any merit is hereby dismissed.

May 17, 2022
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(RAJESH BHARDWAJ)
JUDGE

1. Whether speaking/reasoned ?
2. Whether reportable ?

Yes/No
Yes/No