

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

CRR-803-2022

Date of Decision: *November 10, 2022*

Rajveer Kaur

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. S.K. Arora, Advocate,
for the petitioner.

Ms. Ruchika Sabherwal, DAG, Punjab.

Vivek Puri, J.

The petitioner has assailed the order dated 15.03.2022 passed by the learned trial Court vide which the application under Section 319 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') for summoning of Simarjit Kaur, has been dismissed.

Briefly, the FIR has been registered on the allegations that the marriage of the petitioner was solemnized about six years ago with Rupinder Singh and a son has been born from the wedlock. At the time of registration of the FIR, the petitioner was again in a family

way and running third month of pregnancy. There are allegations to the effect that the petitioner was mal-treated and miscarriage was carried out and the allegations have been mainly attributed against the husband and mother-in-law of the petitioner.

During the course of trial, an application under Section 319 of the Code was moved for summoning of Simarjit Kaur, who is the sister-in-law of the petitioner. The application has been dismissed in terms of the impugned order and the same has been assailed by way of present revision petition.

Learned counsel for the petitioner contends that while appearing in the witness box during the course of trial, the petitioner has specifically and categorically nominated Simarjit Kaur as an accused and there are allegations to the effect that she had instigated the accused who are facing trial to mal-treat her on the pretext of raising demand of dowry. Even Simarjit Kaur, who is residing in Canada had been telephonically threatening to disturb her matrimonial life and bring her brother to Canada.

Learned trial Court while dismissing the application under Section 319 of the Code has observed as following:-

“7. The principle of law governing the scope of invoking power under Section 319 CrPC has

been laid down by Hon'ble Supreme Court in Hardeep Singh v. State of Punjab, (2014) 3 SCC 92, while holding 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. Hon'ble Court has further held that 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 led to conviction.

8. While applying the facts and circumstances of the present case on the touchstone of the well-settled principle of law, it is appearing from the record that initially, no allegation has been leveled against Simarjit Kaur by the complainant in her first information given to the police and the complainant has introduced allegations against said Simarjit Kaur during the trial and in support thereof, she is relying upon the previous complaint which resulted into a compromise.

9. These allegations now leveled against Simarjit Kaur were not part and parcel of the first information given to the police and the complainant has assigned no reason in introducing these allegations at this belated stage. It appears that the complainant intends to implicate said Simarjit Kaur just because she is sister and daughter of the present accused. In matrimonial dispute, there is tendency of

ropeing of all the family members in order to pressurize the husband and the real culprits. In these peculiar circumstances, no case is made out to invoke the extra ordinary power under Section 319 CrPC after analyzing the facts of case in the light of the ratio decidendi of Hardeep Singh's case (supra)."

Section 319 of the Code confers power on the trial Court to find out as to whether a person ought to have been committed as an accused has erroneously been omitted or has been deliberately excluded by the investigating agency and satisfaction has to be arrived at on the basis of the evidence so adduced during the course of trial. The power under Section 319 of the Code is discretionary and such discretion has to be exercised judiciously having regard to the facts and circumstances of the case. The power is extra ordinary and is to be used sparingly and only if compelling circumstances exists.

It is significant to note that the first version of the case has been unfolded in the FIR which has been registered at the instance of the petitioner. Significantly, there is no whisper about Simarjit Kaur in the FIR. Neither any allegation has been attributed nor any role has been assigned to the sister-in-law of the petitioner. Although, while appearing in the witness box during the course of trial, the petitioner has attributed allegations against her sister-

in-law, but the same appears to be an improved version. Even the allegations are only to the extent that her sister-in-law was also conniving with the accused who are facing trial and instigated them to mal-treat the petitioner on the pretext of demand of more dowry. Further allegations are to the effect that the sister-in-law of the petitioner who is residing in Canada even prior to the marriage had been telephonically threatening to disturb her matrimonial life. It has not been disputed that the marriage of the sister-in-law of the petitioner was solemnized prior to the marriage of the petitioner and she had been residing in Canada. Her name has not been reflected in the FIR and the allegations have been leveled only in the statement during the trial. The marriage of Simarjit Kaur is stated to have been solemnized prior to the marriage of the petitioner. Even during the relevant period, sister-in-law of the petitioner was residing in Canada and only allegation leveled against her is to the effect that she had been instigating the accused against the petitioner and the said version appears to be an improved version and as a result of an after thought.

In these set of circumstances, it cannot be said that the material on record would indicate something more than a prima facie case which could justify summoning for having committed the offence under Sections 498-A/313 read with Section 511/201 IPC by invoking the provisions of

Section 319 of the Code. No act or overact is made out on the part of the sister-in-law of the petitioner more particularly when the marriage of the sister-in-law of the petitioner was solemnized prior to the marriage of the petitioner and she is residing in Canada.

For the aforesaid reason, no illegality or irregularity is made out in the impugned order of the learned trial Court.

The instant revision petition is, accordingly, dismissed.

November 10, 2022

vk

(Vivek Puri)

Judge

Whether speaking/reasoned	:	Yes
Whether reportable	:	Yes