

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(114)

CRM-M-20634-2019
Date of Decision: 14.09.2022

Chaman Lal Kanda

--Petitioner

Versus

State of Punjab & another

--Respondents

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

Present:- Mr. Kanwar Pahul Singh, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed praying for quashing of FIR No.48 dated 26.8.2012 registered under sections 406, 498A IPC (Annexure P-1) and further quashing of summoning order dated 18.9.2017 (Annexure P-2) passed by learned JMIC, Jalandhar vide which the application filed by respondents under section 319 Cr.P.C has been allowed and vide order dated 21.9.2017 petitioner has been charge sheeted under section 498-A IPC along with all the subsequent proceedings arising therefrom.

As per brief facts of the case, present FIR was lodged by respondent no.2/complainant, wherein it was alleged that she was married with Harish Kanda on 29.8.2006. At the time of marriage sufficient dowry was given by the family of the complainant, however, her husband and in-laws were not satisfied with the same and soon after the marriage they started taunting her for bringing insufficient dowry. Demand of a car was made from the complainant. The complainant pleaded that her parents are poor and they are unable to meet the unreasonable demands. However, they did not desist from the same. The complainant was given beatings by the accused persons. When the complainant was pregnant she was given

beatings by her father-in-law Chaman Lal i.e. the petitioner, mother-in-law Chanchal and sister-in-law Ashu Verma. She was pressurized by the accused persons to bring Rs.3 lakh from her parents. On the basis of the allegations the FIR in question was lodged and the investigation commenced.

During investigation the petitioner was found innocent and thus he was kept in column no.2, however, on the commencement of the trial the prosecution examined the complainant, who reiterated her allegations in the FIR and thereafter the application under section 319 Cr.P.C was moved by the complainant praying for summoning the petitioner as additional accused to face trial along with co-accused. Learned Trial Court vide impugned order dated 18.9.2017 allowed the application under section 319 Cr.P.C.

Aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that petitioner has been falsely implicated in the present FIR. He submits that petitioner is the father-in-law of the complainant. He submits that the view taken by the learned trial Court is totally based on conjectures and surmises. He submits that after a thorough investigation the petitioner was found innocent and hence he was kept in column no.2. He submits that it is on the basis of the reiteration of the allegations made in deposition of the complainant that the petitioner has been summoned as additional accused to face trial under section 319 Cr.P.C vide order dated 18.9.2017. Counsel submits that from the reading of the allegations in the FIR no case is made

out against the petitioner and hence he was declared innocent by the investigating agency. Counsel submits that in plethora of judgments Hon'ble Supreme Court has held that court should not exercise the power vested under Section 319 Cr.P.C in a cavalier manner and the same has to be used sparingly but the learned Trial Court has failed to appreciate the same and thus has drawn a wrong conclusion in summoning the petitioners under section 319 Cr.P.C. Counsel has relied upon various judicial precedents including **Laduram Vs. State of Rajasthan 2018(5) RCR CrI. 319, Laxmi Vs. State of Kerala, 2018(1) Ker. L.J. 762, Brij Nanda Waraich Vs. State of UP, Virender Vs. State of Haryana, 2017 (3) Law Herald 2394**, to substantiate his arguments. He submits that the impugned orders being suffering from patent illegality deserves to be set aside.

I have heard counsel for the petitioner and perused the record.

Admittedly, petitioner is the father-in-law of the complainant. As per allegations in the FIR soon after the marriage there was a matrimonial discord and on account of the cruelty caused by the in-laws the present FIR was lodged. There were allegations of demand of dowry and beatings given to the complainant by the petitioner and co-accused. However, during investigation the petitioner was exonerated by the investigating agency and kept in column no.2. A perusal of the record would also show that the complainant has named all the accused persons since beginning.

The petitioner has approached this court praying for quashing of the FIR in question and the subsequent proceeding as well.

The Hon'ble Supreme Court has settled the law time and again regarding exercising the jurisdiction under Section 482 Cr.P.C for quashing of FIR. A reference in this regard may be made to the law settled in cases of *State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335* and *Gian Singh vs State of Punjab and another (2012) 10 Supreme Court Cases 303*.

The Hon'ble Supreme Court in *Hardeep Singh Vs. State of Punjab and others, 2014(1) RCR (Criminal) 623* has held as under:-

“98. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary 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 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.

From the reading of the allegations made in the FIR this court is of the opinion that the case in hand does not qualify the parameters of quashing of FIR. In the light of the allegations made, it is apparent that the same are disputed questions of fact and can be assessed only by leading cogent evidence before the learned Trial Court.

On the other hand, the remedy for assailing the summoning under section 319 Cr.P.C was by way of filing a revision petition, however, the petitioner has chosen to approach this court under section 482 Cr.P.C., after about five years of the summoning, when the trial is in advanced stage.

Hon'ble Supreme Court in ***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra, 2021 SCC Online SC 315*** has held that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution and the High Court should exercise the power under section 482 Cr.P.C. with great circumspection and sparingly.

In view of the attending circumstances, the petition being devoid of any merits, is hereby, dismissed.

Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(RAJESH BHARDWAJ)
JUDGE

14.09.2022

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