

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(110)

CRR-985-2021

Date of Decision: 16.03.2022

Raj Kumar

--Petitioner

Versus

State of Haryana & others

--Respondents

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

Present:- Mr. Govind Chauhan, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

The petitioner has approached this Court by way of filing the present revision petition impugning the order dated 6.8.2021, whereby the application filed under Section 319 Cr.P.C by the petitioner-complainant for summoning respondents no.2 to 4 as additional accused, has been declined.

As per facts of the case, FIR in question was lodged by the petitioner. It was alleged that he solemnized the marriage of his daughter Komal with Ravi on 13.2.2016. Soon after the marriage her husband started beating his daughter. She was beaten even at the time when she was pregnant. She was not able to bear the pressure of harassment any more due to which she tried to commit suicide by hanging on 15.7.2019 and ultimately died on 17.7.2019. On the lodging of the FIR the investigation commenced and finally the investigating agency presented challan against the husband. On 24.7.2019 Sanjay Kumar i.e. the brother of the deceased moved an application in which he alleged that respondents no.2 to 4 i.e. Rani Devi, Sagar and Gulshan @ Rupi were also involved in the offence. During investigation the statements of the complainant/father and brother of the deceased were recorded regarding demand of dowry by the accused persons and on account of not meeting the same the deceased was strangled. However, on the conclusion of the investigation challan was

presented only qua Ravi, whereas the allegations against rest of the aforesaid persons were found to be false. Section 306 I.P.C was deleted and Section 304-B I.P.C was added. Learned Trial Court took cognizance of the offence and started recording statements of prosecution witnesses. The complainant/father of the deceased was examined as PW-4. On the basis of his statement the prosecution filed application under Section 319 Cr.P.C for summoning of the proposed accused i.e. respondents no.2 to 4 herein. After hearing both the parties, the Trial Court declined the same vide impugned order dated 6.8.2021. Aggrieved by the same the petitioner/complainant has approached this Court by way of filing the present revision petition.

Learned counsel for the petitioner has vehemently contended that the conclusion arrived at by the learned Trial Court in rejecting the application filed under Section 319 Cr.P.C is totally unsustainable in the eyes of law. It is submitted that soon after the marriage the deceased Komal was harassed on account of dowry by her husband Ravi Kumar along with his relatives i.e. respondents no.2 to 4. It is submitted that it was on the instigation of the respondents that her husband used to give her merciless beatings due to which she died at an advance stage of pregnancy. It is further submitted that on account of the harassment by the respondents she was thrown out of the matrimonial home. They also demanded a motorcycle and cash of Rs.50,000/- from the deceased. He further submits that the respondents used to harass the deceased as she gave birth to a girl child instead of a male child. He has submitted that the investigating agency colluded with the private respondents and hence despite there being specific allegations and the complicity of the respondents in the alleged offence, they were initially exonerated during investigation and hence the

challan was malafidely filed only against the respondent Ravi. Counsel submits that initially, as the investigating agency was colluded with the accused, the FIR was lodged only under Section 306 I.P.C, however, it is on the representation moved by the petitioner that the offence under Section 304-B I.P.C was added. He submits that the petitioner while appearing as PW-4 before the Trial Court has specifically deposed regarding the harassment caused by the respondents in compelling her to end her life. So there was no occasion for the Trial Court to reject the same as the respondents deserved to be summoned under Section 319 Cr.P.C to face the trial along with co-accused Ravi. He submits that as per the law settled, learned Trial Court was competent to summon the respondents but the learned Trial Court did not exercise its jurisdiction judiciously and hence arrived at an erroneous conclusion. Counsel submits that the impugned order being illegal and against the mandate of the law deserves to be set aside and the respondents no.2 to 4 deserve to be summoned to face trial.

I have heard learned counsel for the petitioner at length and have carefully perused the the record of the case.

Admittedly, in the initial version on the basis of which the FIR was registered, the allegations were made only against the husband Ravi and the FIR was registered for the offence under Section 306 I.P.C. However, subsequently the supplementary statement of the complainant was recorded in which the allegations were made against the co-accused. During investigation the allegations against respondents no.2 to 4 were found to be totally false and they were declared innocent by the investigating agency. In the statement of the complainant recorded on 17.7.2019 and other witnesses in their statements dated 18/19.7.2019 did not depose anything

against respondents no.2 to 4. However, a stray allegation was seen against these respondents in the statement of the brother of deceased recorded under Section 161 Cr.P.C on 26.7.2019 that these respondents along with co-accused Rani were also involved in the harassment of his sister in strangulating the deceased. However, in the statement of complainant/father dated 26.7.2019 there was no allegation against these respondents and it is on 10.9.2019 i.e. after a gap of about 55 days of the registration of the FIR that the complainant levelled allegations against respondents no.2 to 4. While being examined as PW-4 the complainant tried to explain his statement made earlier. Besides this the respondent Rani is found to have been married in Ambala, who was not residing with Ravi and deceased Komal. The deposition against rest of the two accused was also not found free from doubts.

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 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.

The petition being devoid of any merit is, accordingly, dismissed.

(RAJESH BHARDWAJ)
JUDGE

16.03.2022

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