

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

CRM-M-50469-2021

Date of Decision: January 20, 2022

Asha Dhingra

.....Petitioner

Versus

Rajiv Dhingra and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Karunesh Kaushal, Advocate for the petitioner.

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RAJESH BHARDWAJ, J.

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

This petition under Section 482 Cr.P.C. has been filed praying for quashing of the order dated 03.03.2021 passed by the Additional District Judge, Amritsar, wherein the revision filed by the petitioner against the order dated 24.10.2019 passed by learned Judicial Magistrate First Class, Amritsar, in FIR No.24, dated 17.03.2015, under Sections 406, 498-A IPC, registered at Police Station Women, Amritsar City, District Amritsar, dismissing the application under Section 319 Cr.P.C., has been dismissed and thus upholding the order dated 24.10.2019. As a result, the petition filed by the petitioner under Section 319 Cr.P.C. has been declined by both the Courts below.

Succinctly, the facts of the case are that the petitioner was married with respondent No.1-Rajiv Dhingra on 10.03.2012. Thereafter, the differences cropped up between the husband and the wife and resultantly the present FIR was registered by the petitioner against her husband, i.e. Rajiv

Dingra (mother-in-law) and Yogesh Dhingra (brother-in-law) levelling allegations of her harassment, beating, maltreatment and torture for non-fulfilling of illegal demand of Rs.15 lacs and a car. It was further alleged that parents of the petitioner performed her marriage with great pomp and show and gave enough dowry. However, the dowry articles were misappropriated by the accused and she was compelled to leave the matrimonial home.

Subsequently, after filing of the FIR, the investigation was completed and after a thorough investigation, the police filed the challan. During investigation, the Investigating Agency found the material against the husband Rajiv Dhingra and presented the challan. So far rest of the three accused are concerned, no material was found against them and hence they were kept in column No.2.

After filing of the challan, the charges were framed and the trial commenced. The petitioner was examined as PW1 wherein the allegations as mentioned in the FIR were reiterated against the co-accused and thereafter on the basis of the same, the application under Section 319 Cr.P.C. was filed for summoning the proposed accused, i.e. Sham Lal Dhingra, Prabha Dhingra and Yogesh Dhiingra. Notice was issued and both the parties appeared before the Judicial Magistrate Ist Class, Amritsar. Learned Magistrate heard both the parties. After hearing both the parties, the learned Judicial Magistrate Ist Class, Amritsar, declined the application under Section 319 Cr.P.C. vide its order dated 24.10.2019. Aggrieved by the same, the petitioner preferred the revision petition before the learned Additional Sessions Judge, Amritsar, impugning the order dated 24.10.2019. Learned Additional Sessions Judge, Amritsar, after hearing both the parties, dismissed the revision vide its order dated 03.03.2021 and thus, upholding the order

dated 24.10.2019 passed by the learned JMIC, Amritsar.

Aggrieved by both the impugned orders, the petitioner has approached this Court by way of the present petition.

Learned counsel for the petitioner has vehemently contended that the view taken by both the Courts below is illegal, unjust and thus unsustainable in the eyes of law. He submits that the petitioner, who is the author of the FIR, has specifically levelled allegations of cruelty, harassment on account of demand of dowry against all the four accused. He submits that there is a specific averment regarding entrustment of *istridhan* (dowry articles) to all the four accused but the investigation was not carried out in a free and fair manner and thus, the police filed challan only against the husband-Rajiv Dhingra and rest of the three proposed accused were erroneously kept in Column No.2. He has relied upon the various judicial precedents in support of his arguments. He submits that both the orders deserve to be quashed and all the three proposed accused be summoned under Section 319 Cr.P.C. to face trial alongwith husband-Rajiv Dhingra.

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

The marriage in question took place on 10.03.2012 whereas the present FIR was registered by the petitioner on 17.03.2015. There is no gainsaying that the petitioner is the author of the the FIR and has levelled allegations against all the three proposed accused as well. However, the matter was thoroughly investigated and after investigation of the case, the challan was presented against the husband-Rajiv Dhingra only whereas rest of all the three proposed accused were shown to be in Column No.2 as the allegations against them could not be substantiated during the investigation

conducted. The record of the case would show that the reply was filed by the accused before the learned trial Court wherein it is mentioned that the present FIR is nothing but a counter blast to the petition under Section 13 of the Hindu Marriage Act filed by respondent No.1-Rajiv Dhingra. The petition was decreed by the Court of Ms.Rajni Chhokra, the then ADJ, Amritsar. Thus, the marriage between the petitioner and respondent No.1-Rajiv Dhingra stood already dissolved. It was further mentioned in the reply that the complainant/petitioner had admitted in her cross-examination that her in-laws' house is completely in her possession and she is the only person who is using the goods lying in the house of her in-laws' family. It is further apparent from the record that all the three proposed accused, i.e., father-in-law, mother-in-law- and brother-in-law are residents of USA since very long. They are the permanent residents of America. During the enquiry it was found that there was no interference in the matrimonial life of the petitioner at the behest of the proposed accused. Not only this, during the period of three years, i.e from the marriage upto the date of the FIR, it cannot be inferred that the proposed accused have been frequently visiting India. 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 unrebutted, the same would lead to conviction, relevant paras of which reads 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 unrebutted, 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."

Weighing the facts and circumstances of the present case and the evidence on record, it is found that the view taken by both the Courts below suffers from no illegality. The Court cannot use this power in a casual manner and thus, summon the accused in a cavalier manner.

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

January 20, 2022

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

(RAJESH BHARDWAJ)

JUDGE

Yes/No

Yes/No