

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

CRM-M-48114-2022

Date of decision : 17.10.2022

Charanjit Kaur

.....Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. L.S. Sidhu, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

This petition has been filed by the petitioner impugning the order dated 30.01.2020 passed by learned Chief Judicial Magistrate, Mansa wherein the application filed by the petitioner under Section 319 Cr.P.C. for summoning respondents No.2 to 5 has been declined and order dated 04.08.2022 passed by learned Sessions Judge, Mansa wherein the impugned order dated 30.01.2020 was upheld in FIR No.68 dated 18.07.2016, under Sections 498-A and 406 of IPC registered at Police Station City 1, Mansa.

It has been contended by counsel for the petitioner that the petitioner before this Court is the author of the FIR. She was married with Raj Kamal Singh Mann on 17.02.2012. It is submitted that mother of the petitioner spent about Rs.18-20 lacs in the marriage. However, after the marriage, her husband, parents-in-law, sister, brother-in-law, Massi and Massad started harassing the petitioner for the demand of dowry. In the month of March, 2012, husband of the petitioner Raj Kamal Singh Mann got new job as Manager in Warehouse Corporation, Punjab and thus, her in-laws started putting pressure on the petitioner for bringing more dowry as the husband was appointed on a higher post. The petitioner was being harassed for bringing insufficient dowry. After the birth of the daughter her in-laws

did not support her and the child died. After the death of the child, cruelty and harassment to the petitioner kept on increasing and the petitioner was turned out of the matrimonial home by the in-laws. Having no other alternative, the petitioner lodged the FIR to take legal action against her husband and in-laws. It is submitted that the police did not conduct the fair investigation and thus, filed the challan only against the husband-Raj Kamal Singh Mann (a proclaimed person). As per provisions of Section 299 Cr.P.C., the petitioner appeared as PW-1 and she reiterated her allegations levelled in the FIR. Thereafter, the application was filed by the petitioner under Section 319 Cr.P.C. praying for summoning respondents No.2 to 5. However, learned Chief Judicial Magistrate, Mansa allowed the application filed under Section 319 Cr.P.C. only *qua* Ghichar Singh (father-in-law) and Raminderpal Kaur (mother-in-law) whereas *qua* respondents No.2 to 5 the same was declined. Aggrieved by the same, the petitioner assailed this order by way of filing CRR No.05 dated 18.02.2020 before the learned Sessions Judge, Mansa. After hearing both the sides, learned Revisional Court declined the same vide impugned order dated 04.08.2022.

Learned counsel for the petitioner submits that the petitioner has levelled specific allegations against all the accused. He further submits that the investigating agencies carried out the investigation in a biased manner and thus, filed the challan only *qua* husband whereas, rest of the accused were exonerated. He further submits that the petitioner-complainant appeared before the trial Court as PW-1 and she reiterated her allegations as made in the FIR. He submits that there was ample evidence against the respondent-accused. However, both the Courts below have fallen in error in summoning only the parents-in-law and declined the prayer of the petitioner *qua* respondents No.2 to 5. He has submitted that both the Courts below have

failed to appreciate the settled proposition of law and thus, drawn a wrong conclusion in accepting the application only *qua* parents-in-law and declined the same *qua* respondents No.2 to 5.

Evidently the petitioner was married with Raj Kamal Singh Mann on 17.02.2012. After the marriage, there arose a matrimonial discord between the petitioner and her husband. The bitterness in the relationship resulted in lodging of the present FIR. The petitioner levelled allegations against her husband and other in-laws. However, learned Magistrate found the petition filed under Section 319 Cr.P.C. legally justified only for summoning the parents-in-law. However, *qua* rest of the proposed accused no fresh evidence was found to have come on record. The Revisional Court re-appreciated the facts and circumstances of the case and the evidence on record and thus, uphold the view taken by the learned Chief Judicial Magistrate, Mansa. For appreciation of the controversy in hand, it is apposite to refer to the statutory provisions of Section 319 Cr.P.C. which reads as under:-

“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 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.”

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 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.

No doubt that the petitioner has levelled allegations against her husband and other members of in-laws. However, after a thorough investigation, the allegations against the husband of the petitioner could only be substantiated. Thus, the challan was filed only *qua* him. The power under Section 319 Cr.P.C. is extraordinary in nature which cannot be used in a cavalier manner and the same has to be used sparingly. As per law settled by the Hon'ble Supreme Court, the satisfaction drawn by the Court should be more than the satisfaction drawn at the time of framing of the charge and that the evidence if goes unrebutted would lead to the conviction of all the accused. The Court cannot be oblivious of the fact that both the Courts below have appreciated the facts and circumstances of the case in the light of the law settled. Thus, there is a concurrent finding against the petitioner and that the petition filed by the petitioner do not qualify for summoning respondents No.2 to 5.

Weighing the facts and circumstances of the case on the anvil of the law settled by the Hon'ble Supreme Court in Hardeep Singh case (supra), this Court do not find any infirmity in the orders passed by both the Courts below. Resultantly, this petition, being devoid of any merits, is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

17.10.2022
m. sharma

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No