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

CRR-2844-2022

Date of Decision: December 19, 2022

Dilbag Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Jagjeet Beniwal, Advocate
for the petitioner.

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RAJESH BHARDWAJ, J.

This revision petition has been filed impugning the order dated 31.08.2022 vide which learned Additional Sessions Judge, Rewari, has dismissed the application filed by the prosecution/complainant under Section 319 Cr.P.C. praying for summoning respondent Nos.2 to 4, namely, Pankaj, Jyoti and Pooja to face trial alongwith the accused already facing trial.

As per facts of the case, FIR was lodged by the petitioner/complainant, i.e. father of deceased Manju. It was alleged that he solemnized marriage of his daughter Manju on 27.05.2017 with Pardeep son of Ashok Kumar as per Hindu Rites and ceremonies. However, after marriage, the entire family of in-laws of his daughter, i.e. mother-in-law, father-in-law, two sisters-in-law, brother-in-law and Pardeep, i.e. son-in-law of his daughter, used to harass and taunt her repeatedly as they were not satisfied with the dowry given. As harassment of his daughter continued unabated, she was compelled to commit suicide. The request was made to take legal action against the accused. After registration of the FIR,

investigation commenced. After thorough investigation, the Investigating

Agency did find the allegations substantiated only against husband Pardeep, mother-in-law and father-in-law, however, rest of the accused, named in the FIR, i.e. respondent Nos.2 to 4 were found innocent. Resultantly, the Investigating Agency filed challan under Section 173 Cr.P.C. only against the husband Pardeep, mother-in-law and father-in-law, whereas rest of the accused, named in the FIR, i.e. respondent Nos.2 to 4, were kept in column No.2. During trial, the complainant/petitioner was examined by the trial Court as PW3. He reiterated his allegations against the husband, father-in-law, mother-in-law and respondent Nos.2 to 4 and on the basis of the same, application under Section 319 Cr.P.C. was filed to summon respondent Nos.2 to 4 to face trial alongwith the accused already facing trial. Learned trial Court heard both the sides and dismissed the application vide impugned order dated 31.08.2022.

It has been contended by counsel for the petitioner that learned trial Court has illegally dismissed the application filed by the petitioner under Section 319 Cr.P.C. He has submitted that the petitioner, who is the father of the deceased, had made specific allegations in the FIR against husband of the deceased Pardeep Kumar, her mother-in-law, father-in-law and respondents Nos.2 to 4, who are *Devar* and *Nanands* of the deceased. He submits that daughter of the petitioner was harassed by all the accused for demand of dowry, as alleged by the petitioner in the FIR. He has submitted that the Investigating Agency did not investigate the case in a free and fair manner and thus, illegally filed the challan under Section 173 Cr.P.C. only against husband, mother-in-law and father-in-law, whereas respondent Nos.2 to 4 were kept in column No.2. He has submitted that during trial, the petitioner appeared as PW3 before the trial Court and made

specific allegations against respondent Nos.2 to 4. He has submitted that hence an application under Section 319 Cr.P.C. was filed for summoning respondents No.2 to 4 to face the trial Court alongwith accused already facing trial. He submits that all three respondents participated in the offence in causing harassment and cruelty to his deceased daughter. He has submitted that unnatural death of his daughter has taken place within seven years of her marriage on account of harassment caused to her by the accused for demand of dowry and hence presumption under Section 113-B of the Indian Evidence Act is attracted but the trial Court has failed to appreciate the same and thus has illegally dismissed the application filed under Section 319 Cr.P.C. He has relied upon **Sunil Bharti Mittal vs Central Bureau of Investigation** AIR 2015 SC 923. He has submitted that in view of the law settled by Hon'ble Apex Court, the impugned order deserves to be set aside and the respondents are liable to be summoned to face trial alongwith the accused already facing trial.

Heard.

Evidently, daughter of the petitioner was married with Pardeep on 27.05.2017. However, she committed suicide on 22.04.2020. The petitioner/complainant lodged the FIR on the basis of the allegations that his daughter was compelled to commit suicide as the accused harassed her for demand of dowry. The Investigating Agency investigated the case thoroughly, however, allegations were substantiated only against husband Pardeep, mother-in-law and father-in-law and not against respondents No.2 to 4, hence, they were kept in column No.2 by the Investigating Agency. The petitioner appeared as PW3 and reiterated his allegations against the respondents. The law for appreciating the issue involving the provisions of

Section 319 Cr.P.C. is to be followed. 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 un rebutted, 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 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.”

In the case in hand, respondent No.2-Pankaj is *Devar*, whereas respondents No.3 and 4, namely, Jyoti and Pooja, are the unmarried sisters-in-law of the deceased and the evidence collected on record does not satisfy the parameters laid down by the Hon'ble Apex Court in the above said case. The Court cannot summon additional accused in a cavalier manner and must proceed with circumspection.

Weighing the facts and circumstances of the case on the anvil of law settled, this Court finds no infirmity in the order passed by the learned trial Court. Resultantly, the petition is hereby dismissed being devoid of any merit.

December 19, 2022
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(**RAJESH BHARDWAJ**)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |