

113 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-44-2022

Date of Decision: 10.01.2022

TARLOCHAN SINGH @ TARLOK SINGH AND OTHERS
... PETITIONERS

V/S

STATE OF PUNJAB AND ANOTHER
... RESPONDENT

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Kewal Krishan, Advocate
for the petitioners.

*(The case has been taken up through video conferencing on
account of Covid-19 pandemic)*

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VIVEK PURI, J. (ORAL)

The petitioners have assailed the order dated 26.11.2021 passed by the learned Addl. Sessions Judge, Ludhiana vide which they have been ordered to be summoned to face trial along with the co-accused.

Briefly, the FIR bearing No. 36 dated 02.04.2019 under Section 304-B IPC has been registered at Police Station Koom Kalan, District Ludhiana on the basis of the statement of Shamsheer Singh alleging that the marriage of his daughter Jasbir Kaur was solemnized with Jasbir Singh on 13.01.2019. Sufficient dowry articles as per his capacity were given but after about one week from the marriage, his daughter called him and informed that the family members of her in-

laws are demanding motor-cycle in the dowry. The complainant tried to persuade his son-in-law but the in-laws' family members of her daughter kept on harassing her continuously. The complainant along with his wife Sarabjit Kaur visited the house of in-laws of their daughter on 31.01.2019 to make them understand and desist from raising demands. On 01.04.2019, the complainant was informed that his daughter has died due to hanging. He was of firm belief that his daughter has died on account of being harassed by her father-in-law Tarlochan Singh @ Tarlok Singh, mother-in-law Baljit Kaur, brother-in-law Gurpreet Singh and husband Jasbir Singh on the pretext of demand of dowry.

On the conclusion of investigation, the challan has been presented against Jasbir Singh, the husband of the deceased and the petitioner Nos. 1, 2 and 3 who are father-in-law, mother-in-law, and brother-in-law respectively of the deceased were declared innocent.

During the course of trial, the examination-in-chief of the complainant was recorded and thereafter, an application under Section 319 of the Code of Criminal Procedure (for short 'Code') was moved for summoning the petitioners as accused. The application was resisted by the accused. However, in terms of the impugned order, the petitioners have been summoned to face trial.

Aggrieved by the said order, the present revision has been preferred.

I have heard the learned counsel for the petitioners and

perused the record.

It has been contended by learned counsel for the petitioners that examination-in-chief of the complainant has been recorded on 04.02.2020 and 27.02.2020 and the application under Section 319 of the Code has been moved after a delay of about 1½ year. Furthermore, there is a general tendency to rope in the family members of the husband. The arrest of petitioner No.3 was earlier effected but he was discharged in terms of the order dated 06.07.2019 passed by the learned Judicial Magistrate First Class. Even no complaint was instituted after the presentation of the challan wherein the petitioners were found to be innocent.

Section 319 of the Code confers the power on the trial Court to find out as to whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and the satisfaction has to be arrived at on the basis of evidence so adduced during the course of trial. It is no doubt true that power under Section is discretionary and such discretion has to be exercised judicially having regard to facts and circumstances of the case. The power is extra ordinary and is to be used sparingly and only if compelling reasons exist.

Now, on advertng to the merits of the present case, it may be mentioned here that no time limit has been prescribed for filing an application under Section 319 of the Code. The power under Section 319(1) of the Code can be exercised at any time after the charge-sheet

has been filed and before the pronouncement of the judgment in the event the facts and circumstances appearing on record warrant to exercise such a discretion. The Court cannot lose sight of the fact that there was restricted hearing of the Courts due to Covid-19 pandemic. Even there is a specific plea in the grounds of revision to the effect that the case was adjourned due to outbreak of Covid-19 pandemic from 15.04.2020 to 21.12.2020. In such circumstances, it cannot be said that the delay of 1½ years in filing the application from the date of recording of the examination-in-chief will in any manner prevent the trial Court to invoke the power under Section 319 of the Code.

The argument on behalf of the petitioners to the effect that there is general tendency amongst the relatives of the women to rope in and implicate the relatives of the husband cannot be termed to be significant in the instant case. There is nothing to suggest that the petitioners had been residing separate from the deceased and her husband. It is specifically emerging in the FIR as well as the statement of the complainant that the family members of the in-laws of the deceased started raising demand within a week of marriage and the complainant along with his wife even went to the house of in-laws of his daughter to persuade the family to desist from raising such demands. Consequently, it cannot be held at this stage that the petitioners are sought to be implicated only on the score that they are the relatives of the husband of the deceased.

At the earlier instance, arrest of petitioner No.3 was

effected. However, during the course of investigation, he was found to be innocent and consequently, on the application of the investigating agency, he was discharged/released from custody for the time being on furnishing bail bonds. The discharge/release from custody of petitioner No.3 cannot be termed to be a circumstance which may desist the trial Court to summon him by invoking the power under Section 319 of the Code in the event there is sufficient, reliable and cogent material justifying to do so.

Furthermore, in the event the complainant had not preferred any complaint after the submission of the challan wherein the petitioners were found to be innocent cannot be construed to be a circumstance which prevents the Court from summoning the petitioners during the course of trial. Such a power is available as per the provisions of Section 319 of the Code.

It is significant to note that the marriage of the deceased took place on 13.01.2019. Within a short period of one week, the family members of her in-laws started raising demand of dowry. They failed to desist from raising such a demand, despite being persuaded by the complainant and his wife. The death has taken place on 01.04.2019 i.e. within a period of about 2½ months from the date of marriage. All these factors speak volume about the involvement of the petitioners in the commission of crime. The petitioners have been named and allegations have been attributed against them in the first version of the case which has been unfolded in the statement of the

complainant resulting in lodging of the FIR. The complainant during the course of trial has reiterated his version and imputed the allegations against the petitioners. As such, it cannot be concluded at this stage that an improved and exaggerated version has been put forth against the petitioners to falsely implicate them as a result of afterthought.

In these set of circumstances, the reasonable satisfaction recorded by the learned trial Court on the basis of evidence recorded during the course of trial in summoning the petitioners as accused cannot be termed to be without any basis and material on record. As such, no illegality or irregularity is made out in the impugned order passed by the learned trial Court.

For the aforesaid reasons, the petition being devoid of merit is dismissed.

10.01.2022

Janki

**(VIVEK PURI)
JUDGE**

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