

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

CRR-2753-2022 (O&M)

Date of Decision: *December 12, 2022*

Kaushalliya

.... *Petitioner*

Versus

State of Punjab and another

... *Respondents*

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Krishan Kanha, Advocate,
for the petitioner.

Vivek Puri, J.

The petitioner has assailed the order dated 02.07.2022 passed by the Court of learned Additional Sessions Judge, Jalandhar, vide which the application under Section 319 of the Code of Criminal Procedure (hereinafter referred to as the 'Code') for summoning respondent no.2 as an accused, has been dismissed.

The case bearing FIR No.121, dated 12.09.2019, under Sections 304B, 34 of the Indian Penal Code, at Police Station Division No.7, Jalandhar has been registered on the basis of the statement of the petitioner alleging that the marriage of his daughter Pooja was solemnized about 02 years ago with Sunil Kumar @ Sabbi and a daughter has been born from the wedlock. The deceased was being harassed and taunted by her husband, Sunil Kumar @ Sabbi, father-in-law, Lal Chand and mother-in-law, Jaspal

Kaur @ Palo on account of non fulfillment of demand of dowry as per their status. Respondent no.2 is the sister-in-law, who is marriage to Jatinder and used to interfere in the married life of the deceased. A sum of Rs. 2 lakhs in cash was paid to fulfill the demand of in-laws of the deceased. The husband, parents-in-law and sister-in-law of the deceased were not happy and used to harass the deceased on account of demand of more dowry. The deceased had committed suicide.

During the course of the trial, an application under Section 319 of the Code was moved for summoning the respondent no.2 as an additional accused. The application has been dismissed by the learned trial Court in terms of the impugned order.

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

Learned counsel for the petitioner contends that on conclusion of the investigation, the challan has been presented, the husband and mother-in-law of the deceased are facing trial, the father-in-law has since died and the respondent no.2 has been found to be innocent. Specific and categorical allegations have been leveled against the respondent no.2 which indicates that the deceased was being harassed even by the respondent no.2 on account of demand of dowry. At the earlier instance, an inquiry was

pending against the respondent no.2. Subsequently, the supplementary challan has been presented as the respondent no.2 has been found to be innocent. There is categoric version emerging in the statement of the complainant recorded during the course of trial that about 5-6 days prior to the death, the petitioner had talked with the deceased and at that time, it was informed that the respondent no.2 is very much harassing her and used to instigate Sunil Kumar i.e. the husband of the deceased, to give beatings to her.

The provisions of Section 319 of the Code empowers the Court to proceed against any person not shown or mentioned as accused, if it appears from the evidence that such person has also committed an offence for which he could be tried together with the main accused. The object of Section 319 of the Code is to ensure that no one who appears to be guilty escapes the trial. The power exercisable under this Section is an extra ordinary power conferred on the Court to advance real and substantial justice. It is required to be used with care, caution, circumspection and only if compelling reasons exist for proceeding against a person against whom no action has been initiated. Furthermore, there must be strong and cogent evidence indicating the involvement of those persons in the commission of crime.

The Constitution Bench of the Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab and others, (2014) 3 SCC 92,** has observed as following:-

“105. Power under Section 319 CrPC is a discretionary and an extraordinary 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.

106. 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 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused.”

In **Ramesh Chandra Srivastava Vs. State of U.P. & another, 2021(4) RCR (Crl.) 219 (Supreme Court),**

it has been held as following:-

“The test as laid down by the Constitution Bench of this Court for invoking power under Section 319 Cr.P.C. inter alia includes the principle that only when strong and cogent evidence occurs against a person from the evidence the power under Section 319 Cr.P.C. should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by this Court, is one which is more than prima facie case which is applied at the time of framing of charges.”

Furthermore, in **Sagar Vs. State of U.P. and another, 2022(2) RCR (Crl.) 344 (Supreme Court)** it has been observed as following:-

“The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above 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.”

On advertng to the merits of the present case, it shall be appropriate to reproduce the observations of the learned trial Court while dismissing the application under Section 319 of the Code, which is as following:-

“6. In her deposition in court as PW2, the complainant has claimed that whenever she used to visit house of her daughter, the proposed accused namely Seema used to say to her (complainant’s) daughter, as to why her mother (complainant) has come, if she cannot bring anything. Complainant has further claimed that Seema used to harass complainant’s daughter by saying that her mother (complainant) has no status to meet them and accused Sunil used to give beatings to her daughter on the asking of Seema.

7. From the perusal of record, including deposition of complainant, it transpires that the allegations, leveled by the complainant in her deposition, are not only vague for want of date of her alleged visit and beatings by Sunil, but the same are improvement, because these allegations do not find mentioned in statement of complainant, which formed basis of FIR. Admittedly, complainant also got recorded her statement with Enquiry Officer, when application with respect to innocence of Seema was moved. Allegations leveled by the complainant in her deposition in the court have

also not been stated in the said statement before enquiry officer, who has found Seema to be innocent.”

It has not been disputed that the respondent no.2 is the married sister-in-law of the deceased and residing separate from the other accused in the house of her in-laws in Kapurthala. Even the marriage of the respondent no.2 was solemnized prior to the marriage of the deceased. The allegations as put forth in the FIR i.e. the first version of the case against the respondent no.2 are to the effect that she used to interfere in the married life of the deceased. There are vague allegations to the effect that even the respondent no.2 was not happy with the dowry and used to harass the deceased and demanding more dowry. No specific instance has been pointed out. The version of the petitioner while appearing in the witness box is to the effect that about 5-6 days prior to the occurrence, the deceased had told her that the respondent no.2 had been harassing her and used to instigate the husband of the deceased to give beatings to her. This aspect of deposition of the petitioner is an improved version as the same does not find mention in her statement on the basis whereof FIR has been registered. Respondent no.2 is the married sister-in-law residing separately in the house of her in-laws at Phagwara, District Kapurthala.

In such circumstances, it cannot be said that the case as sought to be put forth against the respondent no.2 is more than a prima facie case which is to be applied at the time of framing of charge. The version as sought to be put forth against the respondent no.2 appears to be a result of an afterthought and an improved version.

Consequently, no illegality or irregularity is made out in the impugned order, which may warrant interference by this Court.

Instant petition is dismissed, accordingly.

December 12, 2022

vk

(Vivek Puri)

Judge

Whether speaking/reasoned	:	Yes
Whether reporting	:	Yes