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

241

CRR-856-2023

Date of decision : 19.09.2023

Seema Rani

..... Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. K.B. Raheja, Advocate
for the petitioner.

Mr. Amit Shukla, AAG, Punjab.

PANKAJ JAIN, J.

1. Present revision petition is directed against order dated 10.11.2022 passed by Additional Sessions Judge, Fazilka, whereby the petitioner has been summoned to face trial as an additional accused in FIR No.18 dated 01.03.2016, registered for the offences punishable under Sections 328, 380, 384, 497 and 120-B of IPC, 1860 and Section 66(e) of IT Act, 2000 at Police Station City-II, Abohar, invoking Section 319 Cr.P.C.

2. FIR came into being on the statement made by Gaurav Dhuria. In the report filed by the investigation agency under Section 173(2) Cr.P.C., the petitioner was not challaned. Even in the inquiry conducted by Deputy Superintendent of Police on the application filed by one Sudhir Kumar son of Jagdish Rai i.e. husband of the petitioner. The petitioner was found innocent.

3. Counsel for the petitioner while assailing the impugned order submits that even the complainant i.e. Gaurav Dhuria who

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appeared as PW-1 apart from raising a bald allegation that the petitioner was also conspiring with Sachin Sharma, did not state anything material against the petitioner. The present application was moved by main accused Sachin Sharma, where he though claimed himself to be innocent, but sought summoning of the petitioner as additional accused. While allowing the said application qua the petitioner, the trial Court failed to test the allegations qua the petitioner on the touchstone of 'more than prima facie case' as prescribed by the Constitution Bench in the case of ***Hardeep Singh vs. State of Punjab***, reported as **2014(3) SCC 92**. He thus submits that the allegations against the petitioner and the evidence before trial Court are not sufficient to invoke Section 319. Even if the evidence goes un rebutted, the same cannot lead to conviction of the petitioner.

4. Counsel for the petitioner has invited the attention of this Court to another development i.e. the compromise between one of the main accused Sunaina and the complainant Gaurav Dhuria. After the compromise Sunaina has even settled elsewhere.

5. Counsel for the State submits that the inquiry was conducted in which the petitioner was found innocent. Despite notice, respondents No.2 to 4 have opted not to appear.

6. I have heard counsel for the parties and have gone through the records of the case.

7. FIR was registered on the statement made by Gaurav alleging as under:-

“xx xx xx

Application for taking legal action against
Sachin Sharma son of Sh. Manmohan Sharma

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resident of Nai Abadi Gali No. 17-18, near Dr. Rajinder Abohar Tehsil Abohar, who is coming for training of PCS Inspector at Philour on 01.02.2016, under whose allurement my wife Sunaina on dated 13.01.2016 in the evening at about 4.30 p.m. went after taking ornaments and cash, for which I have given applications on 14.01.2016, but no action has been taken by the police, because he himself is going to become police official and besides this aforesaid accused after going of my wife, he is saying about the wrong photos of my wife and whatsapp chatting and wrong recorded, from which it reveals about their illicit relations, for not uploading on internet, he has recovered from me Rs.5,00,000/- (Rs. Five lacs) and now he is demanding Rs. 35,00,000 (Ps. Thirty five lacs). Sir, it is requested that my wife on 13.01.2016 at about 4.00/4.30 p.m. after taking cash and gold ornaments without intimating me and my family, under the allurement of aforesaid Sachin Sharma, had left the home, for which I have submitted application on 14.01.2016 against aforesaid Sachin Sharma, whose copy is enclosed. After submitting my application the police has not taken any not action against aforesaid Sachin Sharma. That on 28.01.2016 aforesaid Sachin Sharma at about 6.00 pm. came to my house and he told me that in his mobile he is having wrong photos of my wife Sunaina and besides this he is having filthy chatting with him by my wife on my house mobile No. 98889-46175 and his mobile No. 97803-01100, from which it reveals about the illicit relations of my wife with him and besides this he told that he is having all recorded from 18.10.2015 to 23.01.2016, which is between mobile

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No. 90562-46175, 98889-46175, 99294-24555, 94628-31232, 94144-78847, 90417-12836, 97841-11202 and his mobile No. 92170-93000 and 97803-01100 and also between other numbers, from which it clearly reveals out that he is having illicit relations with my wife for the last long time. Aforesaid Sachin Sharma aforesaid wrong photos, whatsapp chatting and keeping the conversion, secret has demanded from me more Rs.35,00,000/- (Rs. Thirty five lacs) and he has given threat to me that if you will not pay this amount, then the wrong photos of your wife, whatsapp chatting and recording of conversation will be uploaded on internet by me and I will not leave you and your family to live and aforesaid Sachin Sharma asked me, if you are not having any faith on me, then you may keep my this mobile, in which whole record is there and qua this record I am having other record. You are given one day time to think over it and he stated me that he has been selected in P.C.S. and he has made his selection through S.P. Sher Singh Ghubala by giving bribe of Rs.35,00,000/-, this bribe amount is to be reimbursed from you. That aforesaid Sachin Sharma has given me threat that if you refused to pay the amount or you may initiate any action against me, then after appointment of Inspector I will not left you and your family to live. My sister/Didi is working in D.I.G. office and my Mama (maternal uncle) is also SHO and I have my reach upto high levels. I can lodge false case at any time against you and your family and can sent you and your family to jail. That after today if upon me and my family members any attack is done then for that aforesaid Sachin Sharma may be presumed

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responsible. As such it is requested to you that aforesaid Sachin Sharma may be arrested at the earliest and legal action may be taken against him and wrong photos and chatting and wrong conversation recording, by doing blackmail, more amount of Rs.35,00,000/- has been demanded and prior to this he has recovered Rs.5,00,000/- (Rs. Five lacs), the inquiry may be conducted and aforesaid accused is whether eligible for this post or not, on what basis his selection has been made and from him protection may be made of myself and my family and my family may be saved from ruining of reputation and besides this the bribe given by him may be investigated.”

8. During investigation, nothing was found against the present petitioner and it was only Sachin Sharma who was challaned. Alleging false implication of the petitioner, an application was moved by her husband before the police authorities. On the enquiry conducted, it was found as under:-

“xx xx xx

It reveals from enquiry proceeding that house of Sudhir Kumar son of Jagdish Rai is situated behind the house of the complainant of case. The terrace of their houses are abutting with each other. Seema wife of Sudhir Kumar was having cordial relation with Sunaina, wife of the complainant of case, being neighborer, however nothing has come to the notice about providing intoxicated pills by Seema to Sunaina, on the basis of the following grounds:-

1. The complainant of case has doubt that Seema used to provide the intoxicated pills to his wife

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Sunaina and then, Sunaina further used to administer the same to him & other family members. However, no evidence in this regard has come to the notice.

2. Earlier also, Sudhir Kumar filed an application before the Senior Superintendent of Police, Fazilka in this matter, which was further marked to the Superintendent of Police (Inv.), Fazilka vide office letter No. 331-Special P.S. dated 9.3.2016. It revealed from enquiry proceeding that Seema Rani, who is residing in their neighborhood, was having cordial relation being neighborer, however nothing regarding giving Mobile phone with mala fide intention or providing intoxicated pills has come to the notice.”

9. Gaurav Dhuria when stepped into the witness box as PW-1 reiterated the version of FIR and further alleged that the present petitioner was involved in a conspiracy to ruin his family.

10. The relevant extract of the statement made by Garuav Dhuria reads as under:-

“xx xx xx

When I go through the whole objected date of mobile phone Samsung of accused Sachin Sharma and I found that my wife Sunaina, accused Sachin Sharma, my mother in law Saroj, and other neighbour Seema were conspired with each other and they were plan to ruin our family. On listening the record from the above said mobile, I came to know that my wife Sunaina used to give me and my family members and children the intoxicant tablets i.e. Alprazolam etc in food items. The said intoxicant tablets were provided by accused Sachin Sharma and my neighbour Seema.”

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11. Law w.r.t. invoking powers under Section 319 Cr.P.C. to summon additional accused already stands authoritatively laid down by Constitution Bench of Apex Court in the case of **Hardeep Singh** (*supra*) observing as under:-

“xx xx xx

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

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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.”

12. Thus, the question is whether the aforesaid statement made by Gaurav Dhuria against the present petitioner if goes unrebutted can lead to her conviction?

13. This Court finds that the trial Court erred. There is nothing incriminating in the statement recorded by Gaurav Dhuria which if goes unrebutted can lead to the conviction of the present petitioner. Thus this Court finds that the trial Court erred in exercising jurisdiction under Section 319 Cr.P.C. to summon the present petitioner as additional accused. There is no allegation against the petitioner that can satisfy the ingredients of the offences punishable under Section 328, 380 or 384 read with Section 120-B of IPC and Section 66(e) of IT Act.

14. Resultantly, the present petition is allowed. Impugned order dated 10.11.2022 is hereby quashed.

(PANKAJ JAIN)
JUDGE

19.09.2023
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No