

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**129****CRM-M-10824-2022 (O&M)****Date of order: 18.08.2023****Palvi Sharma****.....Petitioner(s)****Vs.****State of Punjab & Others****.....Respondent(s)****CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA**

Present:- Mr. Inderjit Sharma, Advocate
for the petitioner.

Nidhi Gupta, J.

Present petition under Section 482 Cr.P.C. is filed seeking quashing of impugned order dated 03.02.2021 (Annexure P5) passed by learned Court of Judicial Magistrate, 1st Class, Gurdaspur, whereby an application under Section 319 Cr.P.C. filed by the petitioner/complainant in Criminal Trial bearing No.171/13.06.2019 titled as "State Vs. Avikar Sharma" arising out of FIR No.50 dated 17.03.2018 under Sections 498-A and 406 IPC registered at Police Station Dinanagar, District Gurdaspur (Annexure P2) against respondents No.2 to 5 has been dismissed; and quashing of impugned order dated 31.01.2022 (Annexure P7) passed by learned Court of Additional Sessions Judge, Gurdaspur, whereby criminal revision bearing No.3 of 18.03.2021 filed by the petitioner against impugned order dated 03.02.2021 has also been dismissed. Quashing is sought of both impugned orders passed by learned trial Court as well as Revisional Court.

2. Learned counsel for the petitioner-wife submits that the petitioner was married to the son of respondents No.2 and 3 herein on

09.12.2012. One daughter was born out of this wedlock who is currently in the care and custody of the petitioner. The parties have been living separately since 2017. FIR was filed by the petitioner on 07.03.2018. Respondents No.4 and 5 herein are brother-in-law/jeth and sister-in-law/jethani of the petitioner. Vide the impugned orders, the petitioner's application under Section 319 Cr.P.C. to summon the private respondents No. 2 to 5 herein to face trial has been concurrently dismissed. It is submitted that the impugned orders are prima facie incorrect as specific and serious allegations have been made by the petitioner against the private respondents herein.

3. Learned counsel further states that the petitioner had categorically alleged that the private respondents had repeatedly and continuously taunted the petitioner for bringing insufficient dowry. The private respondents had even demanded a Swift car along with Rs.10 lakh in cash. After the birth of the girl child, all the private respondents had pressurised the petitioner to bring Rs.5 lakh in cash. The petitioner had even reported the matter to the Police Station Dinanagar whereupon a compromise was effected between the parties. However, soon thereafter, the mother-in-law/respondent No.3 herein had again raised a demand for Rs.1 lakh and when the petitioner did not bring the said amount, the father-in-law and the mother-in-law/respondents No.2 and 3 herein respectively had beaten the petitioner upon which she had given them Rs.40,000/-. It is further submitted that even in her deposition as PW1 (Annexure P3), the petitioner had reiterated the above said allegations.

However, despite that, the private respondents have not been summoned to face trial.

4. Per contra, Learned State Counsel submits that to look into the allegations levelled by the petitioner, an inquiry was conducted by the Investigating Agency, whereupon the private respondents herein had been found innocent. It is submitted that the matter was investigated by Assistant Superintendent of Police, Dinanagar, wherein it was reported that the allegations levelled by the petitioner against respondents No.2 to 5 regarding demand for dowry etc. were not found to be true, and hence, the said persons are innocent. Accordingly, the case was registered only against the husband of the petitioner. It is further submitted that trial of the husband of the petitioner is going on in which out of 31 prosecution witnesses 2 have been examined so far.

5. I have heard learned counsel for the parties.

6. Perusal of the record of the case shows that in the FIR (Annexure P2), though the respondents No.2 to 5 have been named in the FIR, however, no specific allegations have been levelled against them. Only vague, general and omnibus allegations have been made in the FIR by the petitioner against all the private respondents.

7. It has further come on record that after the inquiry conducted by the Assistant Superintendent of Police, Dinanagar, the case was marked to Deputy District Attorney, Legal, Gurdaspur for opinion. He submitted his opinion that the case is referred to the District Family Welfare Committee, Gurdaspur. The Chairman-cum-Member, Family Welfare Committee, District Legal Service Authority, Gurdaspur submitted

his report that the allegations levelled by the petitioner against the respondent No.2 to 5 were found to be incorrect, due to the fact that the said persons were residing separately from the petitioner and her husband. Therefore, the committee recommended that the case under Section 498-A IPC be registered against the husband of the petitioner namely Avikar. The committee sent a report to the office of the SSP/Gurdaspur vide their letter No.393 dated 09.03.2018, and the case under Section 498-A/406 IPC was registered against husband of the petitioner.

From the record/ report it therefore transpires that the petitioner and her husband were residing at Himachal Pradesh separately from the respondents no. 2 to 5 herein. In such a situation, it is not clear as to how cruelty as alleged could have been inflicted upon the petitioner.

8. Findings of the learned trial Court in respect of respondents No.2 to 5 are relevant and are reproduced hereinbelow:-

“At the outset, it is apposite to mention that in order to make out a case for summoning the additional accused Vinod Kumar, Ramesh Kumari, Avilash and Anita, the prosecution has relied upon oral evidence of Palvi Sharma (PW-1) and documentary evidence Ex.P1 to Ex.P8. A perusal of statement of Palvi Sharma reveals that she has stated that her parents gave sufficient dowry articles i.e. motorcycle Royal Enfield, diamond ring, Almirah, washing machine, microwave, refrigerator, food processor, gold ring to Avilash, gold ring to Vinod Kumar, ear rings to Ramesh Kumari and Anita however there is not even a single allegation that these articles have been given to any of the accused on the demand of Vinod Kumar or Ramesh Kumari or Avilash or Anita. The demand may be expressed or implied but in the instant case, there is not a single allegation of demand of any article by any proposed accused namely Vinod

Kumar, Ramesh Kumari, Avilash and Anita. Further, the statement of complainant Palvi Sharma reveals that she has stated accused have beatings to her on 04.07.2013 but neither any overt act is attributed to any proposed accused nor any material like medical evidence to support injuries has been placed on record. Neither the part of body where alleged injury was sustained nor the nature, simple or grievous is disclosed. Further, the complainant has stated that her mother-in-law, husband, and sister-in-law demanded sum of Rs.1,00,000/- on the birth of daughter out of which her parents gave Rs.50,000/- in cash, ear ring worth Rs.25,000/- and clothes worth Rs.20,000/- but neither the date, time or year of demand nor the source from where amount of Rs.50,000/- was procured is mentioned. No bill to support purchase of earrings and clothes after birth of child has been placed on record. The name of person to whom Rs.50,000/- or earrings or clothes were entrusted/handed over is also not mentioned. Further, the date, time and place or year of receiving injuries at the hands of husband, mother-in-law, father-in-law, sister-in-law and brother-in-law is also not mentioned. The complaint given to police station, Dinanagar has also not been placed on record. There is nothing to support the fact that the daily expenses of house of complainant at Himachal were paid by the parents of complainant. It is also not disclosed that whether the said amount of Rs.5,000/- were given by parents of complainant in cash or through cheque or demand draft. The documentary evidence viz written complaint to Senior Superintendent of Police, Gurdaspur Ex.P1 reveals that allegations levelled therein have been reiterated by complainant in her statement before the Court. The same has been discussed above. Many improvements are also noticed in statement of Palvi Sharma given in the Court. There is no evidence that the list of dowry articles Ex.P3, Ex.P4 and Ex.P5 were prepared by proposed

persons namely Vinod Kumar, Ramesh Kumari, Avilash and Anita. These documents neither proved demand, refusal, misappropriation nor cruelty to complainant by the proposed persons and thus, documents are not sufficient. Ex.P6 is a simple photograph in which no article can be seen entrusted to main accused or the proposed persons. Ex.P8 is marriage invitation card which only proves the support the undisputed facts that the Shagun ceremony took place on 08.12.2012 and wedding took place on 09.12.2012. No other oral or documentary evidence is relied to prove complicity of proposed persons in the incident. In the opinion of the Court, the evidence discussed above even is general and ambiguous qua proposed persons and even if unrebutted, it will not lead to conviction of the Vinod Kumar, Ramesh Kumari, Avilash and Anita and thus no ground to exercise discretionary and an extraordinary power under section 319 Crpc is made out. Accordingly, the application in hands stands dismissed.”

9. Learned counsel for the petitioner is unable to show anything to controvert or dispute the above said findings. Learned Counsel has relied upon judgment of Hon’ble Supreme Court in **“Rajendra Singh Vs. State of U.P. &Anr.”** Law Finder Doc ID # 131005 decided on 06.08.2007, to submit that in the summoning of a person not arrayed as accused, Court need not be satisfied that he has committed an offence. It need only appear to it that he has committed an offence. However, it also has to be borne in mind that the Hon’ble Supreme Court in Constitutional Bench judgment rendered in **Hardeep Singh Vs. State of Punjab & Others (2014) Volume-III SCC 92**, has held that power under Section 319 Cr.P.C. is a discretionary and extraordinary power which has to be exercised sparingly and consciously only in those cases where the circumstances so warrant. It

is my considered opinion that in the present case, no grounds are made out that warrant the exercise of such power.

Accordingly, I find no error in the impugned orders.

Present petition accordingly stands **dismissed**.

10. Pending application(s) if any also stand(s) disposed of.

18.08.2023
Sunena

(Nidhi Gupta)
Judge

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