

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

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CRM-M-13660-2019

Date of Decision : 25.05.2023

Jaswinder Kaur and others

..... Petitioners

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Inder Pal Singh, Advocate
for the petitioners.

Ms.Guramrit Kaur, DAG, Punjab.

Mr. Nitin Sachdeva, Legal Aid Counsel
for respondent No.2.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioners through instant petition are seeking setting aside of order dated 13.02.2019 (Annexure P-6) whereby Judicial Magistrate Ist Class, Patiala has summoned the petitioners as additional accused to face trial for the commission of offence punishable under Sections 406, 498-A in FIR NO.69 dated 16.07.2016 registered at Women Police Station, District Patiala.

2. The brief facts of the case emerging from the record and which are necessary for adjudication of the present petition are that complainant-respondent No.2 filed a complaint dated 12.03.2016 before police authorities alleging that her marriage was solemnized with Harsimranjit

Singh on 05.01.2014 according to Sikh rites and ceremonies. After few days of marriage, her in-law's family taunted and abused her for bringing less amount of dowry. They locked her inside the room and gave beatings. They demanded a sum of Rs.10 lakhs in cash and one car. The complaint was lodged against husband (Harsimranjit Singh), mother-in-law (Jaswinder Kaur), father-in-law (Mukhtiar Singh), brother-in-law (Udea Singh), sister-in-law (Arshdeep Kaur) and sister in law (Kawalpreet Kaur). Police registered FIR against husband as during preliminary inquiry other family members were not found involved in the commission of alleged offence. Accordingly, *challan* was presented against husband of the complainant. The trial Court framed charges against husband of the complainant. The complainant appeared before trial Court as prosecution witness. Complainant reiterating contents of FIR made allegations against the petitioners herein. On the basis of statement of complainant, the prosecution moved an application under Section 319 Cr.P.C. seeking summoning of the petitioners as additional accused. The trial Court vide impugned order dated 13.02.2019 partly allowed application of prosecution under Section 319 Cr.P.C. and summoned the petitioners as additional accused to face trial under Sections 406 and 498-A of IPC.

3. Learned counsel for the petitioners *inter alia* contends that the complainant along with her husband was staying separate from the petitioners. The couple started living in Jandeala Guru, District Amritsar immediately after three months of marriage. The police did not find petitioners guilty for commission of alleged offence, accordingly, neither FIR was registered nor *challan* was presented against them. The trial Court treating statement of complainant as gospel truth and further acting in

mechanical manner has passed impugned summoning order. There was no demand of dowry and harassment on the part of the petitioners.

4. Learned counsel for respondent No.2/complainant submits that trial Court after considering the statement of complainant has passed impugned summoning order. There is no infirmity in the impugned order. There are categoric allegations against the petitioners, thus, present petition deserves to be dismissed.

5. Learned State counsel submits that the police made thorough investigation and no one except husband of the complainant was found guilty, thus, *challan* was presented against her husband. She further submits that application under Section 319 Cr.P.C. was moved through Public Prosecutor.

6. I have heard the arguments of learned counsel for the parties and perused the record.

7. The conceded position emerging from the record is that marriage of the complainant was solemnized with Harsimranjit Singh on 05.01.2014. The complainant lodged complaint dated 12.03.2016 against her husband as well as other family members. The police did not register FIR against distant and sundry relatives of the complainant and it came to be registered against the husband of the complainant. The police after completing investigation filed its report under Section 173 Cr.P.C. against husband of the complainant. The complainant appeared as prosecution witness and reiterated her allegations made in the complaint which was foundation of FIR. The trial Court did not summon male members, however, has summoned the petitioners i.e. female members of the family as additional accused. The petitioners were staying separate from complainant

and her husband.

8. The case in hand is a pure matrimonial dispute and petitioners are distant and sundry relatives of the complainant. Before advertng with merits of the present case, it would be apt to notice a recent two judge Bench judgment of Hon'ble Supreme Court in **Kahkashan Kausar v. State of Bihar, (2022) 6 SCC 599**. Hon'ble Court while dealing with issue of embroiling of all and sundry family members of a husband in matrimonial cases, after noticing its plethora of judgments has held:

11. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of Section 498-A IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid State intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as Section 498-AIPC as instruments to settle personal scores against the husband and his relatives.

*12. This Court in its judgment in **Rajesh Sharma v. State of U.P. (2018) 10 SCC 472**, has observed : (SCC pp. 478-79, para 14) “14. Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the Statement of Objects and Reasons of Act 46 of 1983. The expression “cruelty” in Section 498-A covers conduct which may drive the woman to commit suicide or cause grave injury (mental or*

physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. [Explanation to Section 498-A.] It is a matter of serious concern that large number of cases continue to be filed under Section 498-A alleging harassment of married women. We have already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualised. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement.”

13. *Previously, in the landmark judgment of this Court in Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273, it was also observed : (SCC p. 276, para 4)*

“4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-AIPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-AIPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In quite a number of cases, bedridden grandfathers and

grandmothers of the husbands, their sisters living abroad for decades are arrested.”

14. Further in Preeti Gupta v. State of Jharkhand, (2010) 7 SCC 667, it has also been observed : (SCC pp. 676-77, paras 32-36)

“32. It is a matter of common experience that most of these complaints under Section 498-AIPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are

not properly visualised by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a Herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of the criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinised with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of an amicable settlement altogether. The process of suffering is extremely long and painful.”

15. In Geeta Mehrotra v. State of U.P. (2012) 10 SCC 741 it was observed : (SCC p. 749, para 21)

“21. It would be relevant at this stage to take note of an apt observation of this Court recorded in G.V. Rao v. L.H.V. Prasad [G.V. Rao v. L.H.V. Prasad, (2000) 3 SCC 693 : 2000 SCC (Cri) 733] wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that : (SCC p. 698, para 12)

‘12. ... There has been an outburst of matrimonial dispute in recent times. Marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their “young” days in chasing their cases in different courts.’

The view taken by the Judges in this matter was that the courts would not encourage such disputes.”

*16. Recently, in **K. Subba Rao v. State of Telangana, (2018) 14 SCC 452**, it was also observed that : (**SCC p. 454, para 6**)*

“6. ... The courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out.

17. The abovementioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-AIPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

9. The petitioners were neither named in the FIR nor police report was filed against them. All the petitioners have been summoned in exercise of power conferred by Section 319 Cr.P.C. A constitution bench in **Hardeep Singh v. State of Punjab, (2014) 3 SCC 92** in reply to question, “What is the degree of satisfaction required for invoking the power under Section 319 Cr.P.C.?” has held:

104. *In Palanisamy Gounder v. State (2005) 12 SCC 327, this Court deprecated the practice of invoking the power under Section 319 CrPC just to conduct a fishing inquiry, as in that case, the trial court exercised that power just to find out the real truth, though there was no valid ground to proceed against the person summoned by the court.*

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.

The above quoted opinion of Hon'ble Supreme Court still holds the field and is consistently followed by all the courts across the country.

10. This court being assigned roster of crime against women, during last few months has adverted with umpteen number of FIR(s) registered under Section 406/498A. Except in very few, allegations made in all the FIR(s) are identical which shows that these FIR(s) are brainchild of persons of legal acumen and police officials. A common thread running through all the FIR(s) is that within few days from the marriage, husband and other family member of in-law's started taunting on account of dowry. They started demanding luxury (big) car. Allegations are woven in such a manner that all the siblings alongwith their spouse and parents of the husband are embroiled. The possibility of demand of dowry within few days of marriage when there was no demand of dowry at the time of or before marriage, cannot be ruled out in stray cases but it cannot be generalised in Indian culture where in the initial days, there is presence of relatives at home, different rituals and ceremonies are performed, couple is found visiting relatives and friends. Hon'ble Supreme Court time and again has deprecated practice of implicating distant and sundry relatives still even today allegations are levelled against all the relatives and they are implicated.

11. As noticed above, Hon'ble Supreme Court has repeatedly observed that in matrimonial disputes, there is growing tendency to implicate distant and sundry relatives. Parents and other relatives of the husband of the lady should not be implicated in the mechanical and cursory manner. Hon'ble Supreme Court has also held that power under Section 319

Cr.P.C. should be exercised sparingly and with full care & circumspection. 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.

12. Hon'ble Supreme Court has time and again observed that criminal law should not be put into motion in a casual or mechanical manner. Even simple notice from police or court causes mental stress and agony. Except few crooks, majority of population of the country avoid litigation and want to live a peaceful life. Conclusion of trial takes a quite long time and its pendency causes countless tribulation and sometimes long lasting adverse effects on the person summoned as well his family. Majority of people are striving for basic necessities of the life and as soon as one member of the family is embroiled in a criminal case, life of entire family is crippled. Conviction rate is well known but harassment during trial is not hidden from anyone.

Therefore, trial court before, in exercise of power conferred by Section 319 Cr.P.C., summoning anyone as accused, on the basis of sole oral testimony of complainant, must consider opinion of the investigating agency which has found proposed accused innocent. Statement of witness/complainant should not be treated as sacrosanct or gospel truth because false implication of distant relatives in matrimonial matters is well known.

13. In the present case, at the time of passing impugned order except oral testimony, there was no other evidence before the trial court.

The petitioners through impugned order have been summoned on the basis of oral testimony. Police had conducted investigation and no role was attributed to petitioners. The State even at this stage is supporting its police report. The complainant in her complaint as well as testimony before trial Court made allegations against male and female members of in-laws. Trial court has not summoned male members and complainant has not challenged said part of the impugned order. It shows that complainant had attempted to implicate all family members of the in-laws. There is no documentary or any other corroborative evidence to implicate petitioners further police conducted thorough investigation after joining both sides and found petitioners innocent. The petitioner No. 1, at present, is about 65 years old lady and petitioner No. 2 got married more than 15 years back. Enquiry prior to registration of FIR was conducted by Superintendent of Police and there is no allegation of bias or partisan. There was allegation of abortion punishable under Section 313 of IPC, however, police in absence of evidence did not file police report qua allegation of abortion and trial court has not framed charge under Section 313 of IPC against any of the accused.

14. Applying the principles laid down by Hon'ble Supreme Court while interpreting scope of power conferred by Section 319 and observation of Hon'ble Supreme Court qua matrimonial dispute, to the facts of the present case, this court is of the considered opinion that trial court without considering material available on record and being swayed by oral testimony of the complainant has exercised power conferred by Section 319 Cr.P.C. and summoned the petitioner to face trial. Except oral testimony, which is reiteration of complaint, there was no prime facie evidence to summon the petitioners, thus trial court has not exercised power within four

corners of power conferred by Section 319 of Cr.P.C. Therefore, the petitioners have been wrongly summoned.

15.. In view of the above facts and findings, the present petition deserves to be allowed and accordingly allowed. Impugned order 13.02.2019 (Annexure P-6) passed by JMIC, Patiala, is hereby quashed.

(JAGMOHAN BANSAL)
JUDGE

25.05.2023
anju

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>