

In the High Court for the States of Punjab and Haryana at
Chandigarh

CRM-M-20814-2023

Date of Decision: August 09, 2023

Rakesh Rani

... *Petitioner*

Versus

State of Punjab and others

... *Respondents*

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Charan Jit Sharma, Advocate,
for the petitioner.

Ms. Ruchika Sabherwal, DAG, Punjab.

VivekPuri, J.

1. The petitioner has impugned the judgment dated 02.07.2022 (Annexure P-5) passed by the Court of learned Additional Sessions Judge, Ludhiana, vide which the revision petition preferred by the respondents no. 2 and 3 has been allowed and the order dated 19.11.2018 (Annexure P-4) passed by the Court of learned Judicial Magistrate First Class, Samrala, allowing the application under Section 319 of the Code of Criminal Procedure (for short `Cr.P.C.') filed by the petitioner was set aside.

2. Briefly, the FIR bearing No. 26, dated 23.02.2016, under Sections 498-A, 406 of the Indian Penal Code (for short `IPC') was registered at Police Station Machhiwara,

District Khanna, at the instance of the petitioner alleging that her marriage was solemnized with Hardip Bhatia on 10.11.2013. The articles of instridhan were entrusted to the husband and other family members. After the marriage, her husband and mother-in-law had been harassing her and saying that she has not brought the dowry as per their status. The husband of the petitioner had also asked her to bring a sum of Rs. 2 lakhs from her parental family as he has to purchase a swift car. Her husband along with the respondents no.2 to 4 had been harassing her and giving beatings. Her husband is having extra marital relationship and she has been turned out of matrimonial house on 12.11.2015.

3. During the course of investigation, the respondents no.2 to 4 were found innocent and the challan was presented against Hardip Bhatia, the husband of the petitioner. During the course of trial, the examination-in-chief of the petitioner was recorded and thereafter, an application under Section 319 Cr.P.C. was moved for summoning the respondents no. 2 to 4. It has been alleged that the petitioner in her examination-in-chief has stated that respondents no. 2 to 4 have also committed the offence along with the accused already facing trial. Their names were also recorded in the application, on the basis whereof, the FIR has been registered.

4. In terms of the order dated 19.11.2019 passed by the Court of learned Judicial Magistrate First Class, the application under Section 319 Cr.P.C. was allowed and the respondents no.2 to 4 were summoned to face trial.

5. The respondents no. 2 to 4 preferred a revision petition before the Court of Sessions. The revision qua respondent no.4 was dismissed as withdrawn, however, the revision petition qua respondents no.2 and 3 was allowed and the summoning order qua them was set aside in terms of the judgment dated 02.07.2022.

6. Learned counsel for the petitioner contends that the FIR has been registered on the basis of the statement of the petitioner. There are categoric and specific allegations leveled against the respondents no. 2 and 3. The case against respondents no.2 and 3 is at par with that of respondent no.4. The respondents no.2 and 3 have been wrongly exonerated during the course of investigation. The allegations qua them as put forth in the FIR are also substantiated by the petitioner during the course of trial. Consequently, the respondents no.2 and 3 are liable to be summoned and faced trial along with co-accused, who are already facing the trial.

7. 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.

8. 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.”

9. 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.”

10. 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.”

11. On advertng to the merits of the present case, it is significant to note that the respondents no.2 and 3 are the married sisters-in-law of the petitioner. The respondent no.4 is the mother-in-law of the petitioner. It has not been disputed that the respondents no.2 and 3 are residing in their matrimonial houses. The statement of the petitioner as recorded during the course of trial also indicates that the respondents no.2 and 3 are residing in their matrimonial houses at Chandigarh and Gurdaspur, respectively.

12. The allegations leveled against the respondents no.2 and 3 in the FIR are to the effect that the husband of the petitioner and his family i.e. mother-in-law and sisters-in-law started harassing her and gave beatings. They even taunted her for bringing less dowry. It is significant to note that the allegations as spelt out with regard to respondents no.2 and 3 are vague and no specific date with regard to any instance has been alleged. A bare perusal of the FIR indicates that no specific role or overact has been attributed to the respondents no.2 and 3. Even as per the FIR, there is nothing to indicate that any specific article of isticridhan was entrusted to the respondents no.2 and 3. Initially, the allegations have been leveled against the husband and mother-in-law of the petitioner to the effect that they had

been harassing her for not bringing the dowry as per their status. Even the demand of Rs. 2 lakhs has been attributed to the husband of the petitioner. While appearing in the witness box, the petitioner has sought to put forth a case to the effect that whenever the respondents no.2 and 3 had been visiting the matrimonial house of the petitioner, they were torturing her on account of bringing insufficient dowry and instigating her husband and mother-in-law to beat her. They along with the mother-in-law of the petitioner had threatened her to remarry Hardip Bhatia with someone. It is significant to note that no such version has been put forth in the FIR and the allegations are to the effect that the husband of the petitioner was having extra marital relationship and had been saying that he will perform marriage with the said girl.

13. The case of the respondents no.2 and 3 cannot be termed to be at par with the respondent no.4. The respondents no.2 and 3 are married sisters-in-law of the petitioner and had residing in their respective matrimonial houses. A general tendency has developed for roping all the relatives of the husband in dowry related criminal cases in order to browbeat and pressurize immediate family members. Even such a tendency qua the respondents no.2 and 3 is also apparent in the peculiar circumstances of the case.

14. In the instant case, it cannot be said that the case as sought to be put forth against the respondents no.2 and 3 is more than a prima facie, which is to be considered at the time of framing of charges. Consequently, no illegality or irregularity is made out in the impugned judgment dated 02.07.2022 passed by the Court of learned Additional Sessions Judge, which may warrant interference by this Court.

15. Instant petition is dismissed, accordingly.

AUGUST 09, 2023

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(VIVEK PURI)
Judge

Whether speaking/reasoned:	Yes
Whether reportable:	Yes