

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

225 (2 cases)

CRR-1777-2019 (O&M)
Date of Decision : 12.05.2023

Balbir Singh and others

..... Petitioners

Versus

State of Punjab and another

..... Respondents

2.

CRR-2139-2019

Kartar Singh and another

..... Petitioners

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Anuj Garg, Advocate
for the petitioners.

Ms.Guramrit Kaur, DAG, Punjab.

Mr. Sandeep Bansal, Advocate
for respondent No.2.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, CRR Nos. 1777 and 2139 of 2019 are hereby adjudicated as both are arising out of order dated 14.02.2019 passed by Sub Divisional Judicial Magistrate, Moonak. For the sake of brevity, facts are borrowed from CRR-1777 of 2019.

2. The brief facts of the case emerging from the record and which are necessary for adjudication of the present petitions are that marriage of respondent No.2-Rupinder Kaur was solemnised with Kulwant Singh on

17.02.2010 according to Sikh rites and ceremonies. The petitioners are distant relatives of the complainant. Balbir Singh is brother-in-law. Jaswinder Kaur, Sarabjit Kaur and Paramjeet Kaur are sisters-in-law of the complainant. Kartar Singh (83 years old) and Bhajan Kaur (75 years old) are parents-in-law of the complainant.

3. The complainant lodged a complaint dated 12.05.2015 with SSP, Sangrur alleging that mother of complainant at the time of marriage spent Rs.10 lakhs and gave 12 tolas gold apart from other articles to her-in-laws family. After marriage, they started demanding big vehicle. They turned her out of home. She filed a suit for maintenance in the Court at Sunam. Her in-laws with the intervention of Panchayat entered into a compromise and as per compromise, she was granted lease money of 04 acres of land with one buffalo. It was further jotted down in the compromise that a separate gate would be installed at the house. As per compromise, her relatives and sisters as well as mother would not visit her and make a phone call to her. In terms of compromise, she rejoined company of her in-laws. The in-law's family again started giving beatings to her and she lodged a complaint at Police Station Kullan against her in-law's family but nobody heard her. One relative namely Nanak Singh wanted to maintain illicit relation with her. She refused and he started supporting her-in-laws' family.

4. The SSP, Sangrur, vide order dated 11.06.2015 marked aforesaid complaint dated 12.05.2015 of the complainant to jurisdictional SHO who registered FIR and investigated the matter. FIR was registered against husband of the complainant and thereafter police report under Section 173 Cr.P.C. was also filed against husband of the complainant. The trial Court framed charges and complainant appeared before trial Court as

prosecution witness. Complainant apart from reiterating contents of FIR made allegations against the petitioners herein. She primarily made allegations against petitioners qua demand of Verna car and beatings to her on 03.05.2015. On the basis of statement of complainant, the prosecution moved an application under Section 319 Cr.P.C. seeking summoning of the petitioners. The trial Court vide impugned order dated 14.02.2019 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.

5. Learned counsel for the petitioners *inter alia* contends that as per statement of complainant before trial Court, there was demand of Verna car on the part of in-law's family and she was given beatings on 03.05.2015. At the time of her beatings on 03.05.2015, all the members of in-law's family were present and they actively participated in the incident. The complainant lodged a complaint on 12.05.2015 and there is no averment qua incident of 03.05.2015. The complainant made statement before trial Court on 13.08.2018 i.e. almost after 03 years from the date of registration of FIR. The complainant intentionally improved her statement and implicated all the petitioners. In the FIR, it is noted that petitioners entered into a compromise with her-in-laws and as per compromise, she became entitled to lease money of 04 acres of land, one buffalo and a separate gate to the house. Had there been demand of dowry or beatings on the part of the petitioners, there was no question of making complainant entitle to lease money of 04 acres of land, buffalo and a separate gate to house. The petitioners are distant relatives of the complainant and have been mechanically roped in the controversy.

6. Mr.Sandeep Bansal, Advocate has filed his power of attorney on behalf of respondent No.2, which is taken on record. He submits that charges have already been framed against the petitioners and trial is pending at prosecution evidence stage. The trial Court was not supposed to weigh evidence whereas trial Court was supposed to form *prima facie* opinion. The complainant in her examination had made categoric allegations against the petitioners, thus, the trial Court has rightly summoned the petitioners. The police intentionally did not take care of different complaints of the complainant and FIR came to be registered on the basis of complaint dated 12.05.2015.

7. 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. The complainant in its complaint dated 12.05.2015 has not disclosed incident dated 03.05.2015, thus, there was no question to implicate family members of the husband of the petitioner.

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

9. The conceded position emerging from the record is that marriage of the complainant with Kulwant Singh was solemnised on 17.2.2010. The complainant is a fatherless and brotherless lady. Her marriage was arranged by her mother, sisters and sisters of her mother (mausi). A matrimonial discord abrupted in the family. The complainant left her matrimonial home and thereafter entered into a compromise. In terms of compromise, the complainant was made entitled to lease money of 4 acres of land, one buffalo and a separate gate to the house. The complainant was

asked not to talk to her sisters and mother. The complainant lodged complaint dated 12.05.2015 with SSP, Sangrur which culminated into FIR dated 12.06.2015. In the FIR as well as police report under Section 173 Cr.P.C. only husband of the complainant was nominated. Complainant through Public Prosecutor moved an application under Section 319 Cr.P.C. which was allowed and petitioners came to be summoned as additional accused to face trial alongwith husband of the complainant.

10. The case in hand is a pure matrimonial dispute and petitioners are distant and sundry relatives of the complainant. Before advertizing 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.

11. 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.

12. 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 outcome of persons of legal acumen and police officials. A common thread running through all the FIR(s) is that within 10 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 10 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.

13. In the case in hand, FIR was registered against husband of the complainant. For the purpose of clarity, extracts of FIR are reproduced as below:

"It is submitted that I, Rupinder Kaur daughter of Babu Singh, am resident of Dhindsa, Tehsil Moonak, District Sangrur. My marriage was solemnized about 6 years ago with Kulwant Singh son of Kartrar Singh, resident of

Kullan, Tehsil Tohana, District Fatehabad, Haryana and I have one son aged 4 years who lives with me. After a few days from the marriage, my in-laws started troubling and harassing me. My father is not alive nor I have any brother and I have my only mother. My mother and my elder sisters jointly with my aunts (Massian), (sisters of mother) solemnized my marriage according to their capacity and in the marriage, gave Rs.10 lacs in cash and 12 Tola gold and other articles in dowry and every thing was with them. But even then they were demanding a big vehicle. When I refused, I was turned out of the house. Then I filed a suit for maintenance in the court at Sunam. During this period, I lived with my sister. Then my in-laws family with the intervention of Panchayat men took me along by reaching a compromise with the understanding that I will get lease money of 4 acres with one buffalo and carve out a separate gate to the house and also laid down a condition that my relatives, sisters, mother etc. will not visit me nor I will make a phone call to any relative and I agreed to all their conditions. But they did not fulfill any my condition and they again started giving me beatings. I lodged a complaint with Police Post Kullan against my in-laws family for giving me beatings but I was not heard by them. One of my relatives Nanak Singh son of Sainsi Singh village Rupawali, Tehsil Tohana asked me if you maintain illicit relation with me, I will help you in getting inhabited in your in-laws. When I flatly refused, he turned in favour of my in-laws. I am too much aggrieved at the hands of my in-laws family and I have not been given any hearing till today and being their acquaintance in the Police Station and Tehsil, I am not being heard at all. I being alone, am helpless before them. So, it is requested that strict action may be taken against my in-laws family for giving me beatings without any reason, asking me to bring more dowry, demanding big vehicle and justice may be done to

me and my life and liberty may be protected and I may be helped to inhabitate in my house. It shall be so kind of you.”

14. From the perusal of above-quoted FIR, it is quite evident that there was not even whisper of incident dated 3.5.2015 whereas foundation of testimony of the complainant before trial court rested on alleged incident dated 3.5.2015. The FIR is reproduction of complaint dated 12.05.2015 which means complaint was filed within less than 10 days from the date of alleged incident. Examination in chief of the complainant took place after 3 years from the FIR/challan and complainant implicated all the relatives including parents-in-law who were more than 70 years old at the time of alleged incident. The complainant was fatherless and brotherless and there is no averment in the FIR that petitioners performed marriage because complainant was having land or any other property. In the FIR, challan and testimony of the complainant, there is nothing to disclose demand of dowry at the time of or prior to marriage. The complainant entered into compromise with her in-laws and as per compromise, she became entitled to lease money of 4 acres land, one buffalo and separate gate to the house.

The petitioners were not named in the FIR dated 12.6.2015 as well as police report under Section of 173 Cr.P.C. which was presented on 25.11.2015. The complainant did not raise objection qua non-arraying of petitioners as accused in the FIR as well as police report though she was having legal recourse.

15. Kulwant Singh and his family agreed to tie nuptial knot with complainant knowing that she is fatherless as well brotherless; marriage of the complainant was solemnised jointly by mother, sisters and mother's sisters of the complainant which indicates that mother was not resourceful; petitioners did not demand dowry at the time of or before the marriage;

petitioners in favour of complainant transferred lease money of 4 acre land apart from one buffalo and separate gate to the house; complainant in her complaint dated 12.5.2015 did not disclose alleged incident dated 3.5.2015 which is foundation of impugned summoning order; it is highly improbable that complainant lodged complaint against her husband on 12.5.2015 and did not utter single word qua incident dated 3.5.2015 whereas her testimony before trial court is founded on alleged incident dated 3.5.2015; complainant did not take legal recourse to non-arraying of petitioners in police report and in her testimony recorded after 3 years from FIR/challan she made imputation against petitioners; father-in-law of the petitioner at present is 83 years old and mother-in-law is 75 years old.

The above-stated facts collectively indicate that complainant with intent to enlarge scope of her complaint and embroil every member of the in-law's family implicated all the petitioners in her testimony. The trial court relying upon oral testimony of the complainant has summoned all the petitioners to face trial.

16. 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.

17. This court, more often than not, has noticed that in FIR cases, wheresoever police does not find all the persons nominated in the FIR guilty of commission of offence, an application under Section 319 of Cr.P.C., on the basis of oral testimony of the complainant which is verbatim replica of FIR, is moved through public prosecutor and trial court without finding any other evidence on record summons persons named by the complainant. The police registers FIR on the basis of statement of complainant and thereafter investigation is conducted. If by ignoring investigation, persons have to be summoned on the basis of oral testimony which is foundation of FIR and not found gospel truth, there seems no reason to conduct investigation. Mere oral testimony cannot be sufficient to implicate any person. There should be prime facie material on record to implicate anyone.

18. 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.

19. This Court while disposing of CRM-M-51476-2022 has observed :

“The object of arrest is neither punitive nor preventive. Detention or arrest not only deprives a person from his fundamental right of personal liberty guaranteed by Article 21 but also freedom guaranteed by Article 19(1) of our Constitution. Life of every human being is most precious gift of God and everyone has very limited span of life which cannot be spoiled on account of incompetence, personal grudge, vengeance of someone; or brutal, illegal, unethical action of the State machinery. Except habitual offender, commoners living simple life after arrest lose self-respect and confidence within himself as well State. It has become very common to put criminal law in motion even though dispute involved is purely contractual or civil in nature. Many times arrest entails deprivation of source of income of entire family besides forever stigma in a closely knit society like ours. There is neither mechanism to compensate a man who is later on found innocent nor acquittal can return valuable time, energy, status, future of family members especially children which is lost on account of incarceration of bread earner of the family. Imprisonment before conviction is a sort of punishment especially when rate of conviction in our country is abysmally low.”

20. In the present case, at the time of passing impugned order except oral testimony recorded after 3 years from the date of FIR/police report, 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.

21. 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 was beyond complaint forming edifice of FIR and police report, 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.

22. In view of the above facts and findings, the present petitions deserve to be allowed and accordingly allowed. Impugned order 14.02.2019 is hereby quashed.

(JAGMOHAN BANSAL)
JUDGE

12.05.2023
anju

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