

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-40896-2021(O&M)
D.O.D - June 2nd, 2023

Harbhajan SinghPetitioner

VERSUS

State of Punjab and othersRespondents

AND

CRM-M-40897-2021

Harbhajan SinghPetitioner

VERSUS

State of Punjab and anotherRespondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr.Dhirinder Chopra, Advocate, for the petitioner
in both cases.
Mr. Gurdarshan Singh Sidhu, AAG, Punjab.
Mr.R.S.Bains Sr. Advocate
with Mr. Loveneet Thakur, Advocate,
for private respondents.

SANJEEV PRAKASH SHARMA, J

1. Since both the above mentioned petitions have arisen out of the same FIR, therefore, are being decided by the common order and facts are being taken from CRM-M-40896-2021.

2. The petitioner, by way of the present petition, has prayed for to quash the order dated 08.03.2021, passed by the learned Additional Sessions Judge, in Criminal Revision dated 22.10.2019

and restore the order dated 05.10.2019, passed by the learned JMIC, Malout. The learned Additional Sessions Judge has allowed the application under Section 319 Cr.P.C, allowing the revision petition filed by the concerned respondents and has set aside the order passed by the learned Magistrate whereby allowed the application under Section 319 Cr.P.C.

3. The brief facts of the case are that an FIR came to be registered by the wife Gurpreet Kaur (since deceased), wherein, she complained against her husband, father-in-law, mother-in-law, sister and brother of her husband of having caused cruelty to her and having provoked her husband to beat her for not bringing sufficient dowry. After registration of FIR, investigation was conducted by the officers of the rank of Superintendent of Police and allegations levelled against the father-in-law, mother-in-law, sister and brother of her husband were found to be false and not substantiated, resultantly charge sheet was filed only against the husband of the complainant while the other four persons were left out.

4. Charges were framed and the complainant could not appear for deposition of her evidence as she was seriously unwell and ultimately expired on 10.01.2018. The petitioner Harbhajan Singh, who is the father of the complainant PW4 recorded his testimony and levelled allegations against the other four family

members namely father-in-law, mother-in-law, brother and sister of the husband of the deceased complainant. An application was also thereafter moved under Section 319 Cr.P.C by him for making them as an additional accused.

5. Taking into consideration the contents of the statement of Harbhajan Singh and the application, learned Magistrate issued summons to the father-in-law, mother-in-law, brother and sister of the husband and directed that they are to be impleaded as co-accused and directed to frame charges against them. The said order passed by the learned Magistrate dated 05.10.2019 was challenged by all the four persons for filing two separate revisions, one by father, mother and sister of the husband of the complainant (deceased) and the other by Baljit Singh, brother of the husband of the deceased complainant.

6. Learned Additional Sessions Judge has, after discussing the law relating to the provisions under Section 319 Cr.P.C, reached to the conclusion that there is no substantial evidence to implead the said persons as accused in addition to the husband for offences under Sections 498-A and 406 IPC and set aside the order of the learned Magistrate.

7. Learned counsel for the petitioner submits that there was a specific allegation made by the deceased/complainant in her

complaint about the respondents having demanded dowry and of provoking the husband to cause physical violations on the complainant for not bringing sufficient dowry. The petitioner in his own statement made as PW4 has also mentioned about the various articles given by him as “*STRI DHAN*” to his daughter, who was turned out from the matrimonial home. The entire articles given in marriage have been kept by the respondents and it was a specific case that the dowry articles were being misused by the four respondents apart from the husband. Thus, it was argued that a case where 498-A and 406 IPC would apply even as against four respondents.

8. The counsel appearing for the respondents, on the other hand, submits that the wife was suffering from psychiatric problem of obsessive compulsive disorder of extreme level. She would not allow anyone to teach her or enter her room out of fear that she may get contaminated. Respondents have in their reply given out the typical symptoms of obsessive compulsive contamination in order to assert the fact that the wife was psychiatric patient and this aspect was not brought to the knowledge of the respondents or their son/husband of the deceased complainant at the time of marriage and it is only later on that said disease was revealed for which medication was also done. However, wife was not ready to admit her

psychiatric problem nor she was cooperative to take proper treatment. She refused to accept the family of the husband out of fear and ultimately the husband filed a divorce petition and as a counter to the said divorce petition, the FIR was registered by the deceased/complainant. It is urged that as a senior police officer had conducted the investigation and found the complaint to be false as against the respondents father, mother, sister and brother of husband, there was no cogent evidence before learned Magistrate to take cognizance on an application under Section 319 Cr.P.C.. They have supported the order passed by the learned Additional Sessions Judge. It is stated that the present petition is nothing but an attempt to rope in aged and physically ill parents of the husband and brother and unmarried sister. It is stated that respondent no.3 mother of the husband and no.2 father were both seriously ill and the former is suffering from cancer. The claim of demand of dowry has been denied and the claim set up by the respondent-applicant of having given of Rs.15,00,000/- as cash for buying innova car is also false. The claim relating to giving cash and gold has also been denied and further stated that all the gold which the complainant daughter possessed had been taken away by her when she left the home on the pretext that there is already a locker available in the bank at Malout and the gold will be safe there. It is stated that all the gold of the

respondent family is also in the possession of the petitioner. It is stated further that the family had also installed an air conditioner in the room of the complainant and also installed a generator to maintain the electricity and submit that there is no case for initiating proceedings or arraying them as accused.

9. I have considered the submissions.

10. Section 319 Cr.P.C reads as under:-

Section 319 of Code of Criminal Procedure, 1973:

“319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re- heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

11. In **Hardeep Singh v. State of Punjab and others**

reported in **2014 (3) SCC page 92**, Constitution Bench of the Apex

Court, the Supreme Court held that the power under Section 319

Cr.P.C can be exercised only if the trial commences with the

recording of the evidence and it can also be exercised in exceptional circumstances before the said stage arises. However, the Magistrate is permitted to take cognizance at the stage where the case is to be committed to the Sessions Court. While answering question no.3 relating to the word evidence used in Section 319 Cr.P.C it was held that the evidence mentioned in Section 319 Cr.P.C contemplates the evidence of witnesses given in the Court and not the material available in the charge sheet or case diary. The inquiry for the said purpose is not attributable to the investigation or the prosecution but has to be done by the Court itself from the evidence which has come on record. Thus, the facts other than the material collected during investigation, which are noticed by the evidence which has come on record, would be a part of process of inquiry for reaching to a conclusion where the additional accused are required to be summoned under Section 319 Cr.P.C.

12. Further the Constitution Bench also reach to the conclusion that the Court has not to wait till the cross examination of witness is over to initiate proceedings under Section 319 Cr.P.C. If it is convinced even on the basis of evidence appearing in examination in chief, it can proceed.

13. As regards the degree of satisfaction, the Apex Court held as under:-

“109.

Thus, it is evident that power under section 319 Cr.P.C. can be exercised against a person not subjected to investigation, or a person placed in the Column 2 of the Charge-Sheet and against whom cognizance had not been taken, or a person who has been discharged. However, concerning a person who has been discharged, no proceedings can be commenced against him directly under section 319 Cr.P.C. without taking recourse to provisions of Section 300(5) read with Section 398 Cr.P.C.?”

14. In **(2021)12 SCC page 608** reported as **Ramesh Chand Srivastava v. State of Uttar Pradesh and another** considering the law in **Hardeep Singh’s case (Surpa)** a note of caution was laid down as under:-

“10. We say this for the following reason: The test as laid down by the Constitution Bench of this Court for invoking power under Section 319 CrPC inter alia includes the principle that only when strong and cogent evidence occurs against a person from the evidence the power under Section 319 CrPC 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.

11. It will all depend upon the evidence which is tendered in a given case as to whether there is a strong ground within the meaning of para 105.”

15. In a recent case **Vikas Rathee v. State of Uttar Pradesh**, decided on 01.03.2023 **Crl.Appeal No. 644 of 2023**, the Apex Court after relying upon **Hardeep Singh’s case (Supra) and Sagar v. State of Uttar Pradesh**_reported as **2022(6) SCC 389** proceeded to hold that the evidence which had come on record was not sufficient to summon additional accused in exercise of power under Section 319 Cr.P.C as it did not establish complicity of the concerned appellant in crime.

16. Having noticed the law as expounded by the Supreme Court, this Court finds that the facts of the present case reveal a peculiar situation.

17. The complainant/lady lodged the complaint against five named persons which included the four respondents and her husband. She made specific allegations in the FIR, where after the charge sheet was filed, at the stage of trial her statement could not be recorded as she expired. The complaint and contents thereof would have to be therefore supported by evidence.

18. In the present case, the petitioner has deposed as PW4 before the Court of law and has supported the version in the FIR. He has also mentioned about the various articles given out in dowry to

his deceased daughter at the time of marriage. The averment has been made of the articles lying with all the five named persons including father-in-law, mother-in-law, brother and sister of the husband and that they are being used by them.

19. In view of the above evidence, the Magistrate has issued summons adding the four of them as additional accused for offences under Section 406 IPC. It has also been stated in his evidence that the respondents had provoked the husband of the deceased daughter to give her beating for demanding of additional dowry which she complained to her father. The evidence, therefore, directly corroborates with the complaint of the deceased. Question of the respondents defence would not arise at this stage and their contention of the dowry articles having been returned cannot be a subject matter of examination at the stage of deciding application for making additional accused under Section 319 Cr.P.C.

20. In Hardeep Singh's case (Supra), the Apex Court has held that the persons against whom the cognizance has not been taken, powers under Section 319 Cr.P.C can be exercised and the evidence which is to be looked into can also be the statement which is not a subject matter of cross examination. The degree of satisfaction for summoning the original accused and subsequent accused has not to be that there is likelihood of being convicted but

it is the same as for framing of charge. Thus, the defence of the accused subsequently impleaded can always be put up which would be examined at the subsequent stage of trial. Therefore, since at the stage of 319 Cr.P.C, only *prima facie* case is required to be established from the evidence led before the Court not to be necessarily on the basis of cross examination; this Court finds that there is enough corroborative evidence available on record to show the complicity and involvement of the four persons. The order of the learned Magistrate therefore, cannot be faulted and order of the learned Additional Sessions Judge deserves to be set aside.

21. Accordingly, the orders dated 05.10.2019 (Annexure P7), passed by the learned Magistrate in both the petitions are restored and the orders passed by the learned Additional Sessions Judge dated 08.03.2021 (Annexure P-9) in both the petitions are quashed and set aside. The learned Magistrate is now directed to proceed accordingly.

22. In view of the above, both the petitions stand allowed.

23. Pending misc. application(s), if any, shall also stand disposed off.

(SANJEEV PRAKASH SHARMA)
JUDGE

2nd June, 2023
mamta

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No