

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

149

CRM-M-41315-2023

Date of Decision: 21.08.2023

Rinky Sharma

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. S.S. Chatrath, Advocate for the petitioner.

NIDHI GUPTA, J.

1. Prayer in this petition filed under Section 482 Cr.P.C. is for setting aside the order dated 10.10.2022 (Annexure P-6) passed by the learned Judicial Magistrate 1st Class, Pathankot, whereby the application moved by the petitioner/complainant under Section 319 Cr.P.C., for summoning respondents No. 2 to 4 as additional accused to face trial in case FIR No. 67 dated 11.07.2019 (Annexure P-1) registered under Sections 498-A and 406 read with Section 34 IPC at Police Station Division No. 2, Pathankot was dismissed; and order dated 06.03.2023 (Annexure P-7), vide which the learned Additional Sessions Judge, Pathankot, has affirmed the order dated 10.10.2022 (Annexure P-6).

2. Learned counsel for the petitioner submits that the petitioner was married to Prashant Sharma, brother of respondent No. 2-Nikita Sharma on 14.11.2015 and one son was born out of this wedlock on 17.11.2017, and on that day i.e. 17.11.2017 itself, the petitioner was shunted out from the matrimonial home. It is submitted that respondent

No. 2 herein is the sister-in-law (*Nanad*) of the petitioner; respondent No. 3 is the husband of respondent No. 2, and respondent No. 4 is the maternal uncle (*mama*) of the petitioner's husband.

3. Learned counsel for the petitioner further submits that private respondents No. 2 to 4 have been duly named by the petitioner and serious and specific allegations have been levelled against them that they have harassed and maltreated the petitioner in one way or the other. It is submitted that an inquiry in the matter was conducted by the Superintendent of Police (HQ), Pathankot. As per inquiry report dated 12.06.2019 (Annexure P-2), the Inquiry Officer, has recommended that respondents No. 2 and 3 along with other persons were found to be actively involved in the harassment and maltreatment of the petitioner. It is also submitted that the petitioner as PW-1 in her testimony dated 03.12.2021 (Annexure P-3), had specifically and clearly mentioned the role of each of the proposed accused and also given details as to how they harassed and maltreated her. It is contended that therefore, the impugned orders deserve to be set aside.

4. No other argument is raised on behalf of the petitioner.

5. I have heard learned counsel for the petitioner.

6. Perusal of the record of the case reveals that though the private respondents No. 2 to 4 have been named in the FIR, however, no specific allegations have been made against them. Only general and omnibus allegations have been made against all the proposed accused persons to the effect that *"Sir, It is submitted as under: 1. That my marriage with the accused was solemnized as per Hindu rites and ceremony on 14 Nov. 2015 in M.K resort Pathankot. The Marriage was*

duly consummated and out of the said wedlock, one male child was born on 17/11/2017. My Father had spent enough money on the marriage much beyond their means as per demands of the family of my husband. At the time of marriage, my parents had given many expensive articles to my husband and family as per their wishes. But the same was not enough to meet the greed and the lust of my husband and his family". This, is the sum total of the FIR.

7. Moreover, it is an admitted fact that respondent No. 2 is the married sister-in-law (*nanad*) of the petitioner who is happily residing in her matrimonial home. In such circumstances, probability of infliction of cruelty by the said respondent upon the petitioner seems doubtful. It is to be noted that it is only in her testimony as PW-1 dated 03.12.2021 (Annexure P-3), that the petitioner had greatly improved upon her original complaint, and made allegations against the acquitted respondents.

8. Even further, it cannot be ignored that there are concurrent findings of both the Courts below. In this regard, findings of the learned Additional Sessions Judge, Pathankot, in para 10 of the impugned order dated 06.03.2023 (Annexure P-7) is reproduced as under:-

“10. After hearing rival arguments addressed by the counsel for the parties and further going through the record available on file, this Court is of the view that the present revisionists have been summoned by the Court of Ms. Dazy Bangarh, learned JMIC, Pathankot, whereby the learned Trial Court dismissed the application under Section 319 Cr.P.C. At the outset it is observed that for summoning of additional accused by invoking jurisdiction under Section 319 Cr.P.C, standard of proof is required to be higher than the standard of proof employed for framing of charge. It is also required

on the part of learned Trial Court to evaluate all the evidence and material placed on record while considering application under Section 319 Cr.P.C. Now, coming to the testimony of statement PW-1 Rinki Sharma complainant, in the whole of her testimony the complainant has not deposed about any specific entrustment to any of the proposed accused and only general and vague allegations have been alleged by her. No specific instance of any beating given by each of the proposed accused have been narrated by the complainant in her whole deposition. The proposed accused Nitika Sharma is the sister of accused Prashant Sharma whereas proposed accused Pankaj Sharma is the husband of Nitika Sharma. Both of them are residing in Andaman and Nikobar Islands, where they are working. However, proposed accused Kailash Nath Bhanot is the maternal uncle of accused Prashant Sharma and not the member of the matrimonial house. He has no sufficient role to play in the matrimonial dispute between accused Prashant and the complainant. It is the general tendency to involve all the family members of the husband just to put more pressure to effect compromise, So, it is the duty of the court to deal the matter with care and caution, if their involvement in the crime is made out or not.....”

9. In the facts and circumstances of the present case, reference may also be made to judgment of the Hon’ble Supreme Court in the case titled as ***Sarabjit Singh v State of Punjab, (2009) 16 SCC 46:*** wherein it has been held that:

“xxxx 21. An order under Section 319 of the Code, therefore, should not be passed only because the first informant or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be assigned by the court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. Such an evidence must be

convincing one at least for the purpose of extraordinary jurisdiction. For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned. xxxx

10. The aforementioned view has further been upheld by the Hon'ble Supreme Court in the case of ***Hardeep Singh v State of Punjab and others, (2014) 3 SCC 92.***

11. In view of the discussion above, I find the instant petition to be completely devoid of any merit, and the same is hereby **dismissed**.

12. However, nothing stated above shall be taken as an expression of opinion on the merits of the case.

21.08.2023

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(NIDHI GUPTA)
JUDGE

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No