

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-M No.52825 of 2023 (O&M)
Date of Decision: 08.11.2023

Suresh Kumari

... Petitioner

Versus

Nisha and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Paramjit Singh Jammu Advocate,
for the applicant-petitioner.

MANISHA BATRA, J.

CRM-46322-23

The application is allowed as prayed for subject to just exceptions and evidence of complainant/PW1 Suresh Kumari is taken on record as Annexure P-6.

Main Case

1. The instant petition has been filed by the petitioner under Section 482 of Cr.P.C. for setting aside the order dated 24.01.2023 passed by learned Sub Divisional Judicial Magistrate, Shahabad whereby an application filed under Section 319 of Cr.P.C. in case bearing FIR No.165 dated 13.04.2019 registered under Sections 323, 406 and 498-A of IPC at Police Station Shahabad, District Kurukshetra, had been dismissed.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of a written complaint submitted by the complainant Suresh Kumar

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alleging therein she was married with the accused Rinku on 23.02.2018. Vinod Kumar son of Ram Kalan resident of Gausala Jagadhari was the mediator in the marriage. She was a Police Constable posted at Ambala. After her marriage, the members of her in-laws family started harassing her on account of bringing less dowry. They pressurized her to pay instalment of loan which had been obtained by them for purchasing a new car. Demand of a sum of Rs.8 lacs had been raised by them. Her mother-in-law was not of good character and once the petitioner had seen her in an objectionable position with some persons. On 31.12.2018 Nisha wife of Gulab and Chandni wife of Rohit who are her sisters-in-laws came to her matrimonial house along with their respective husbands and extended threats to her. Her husband along with her parents caught hold of her. All of them gave kicks in her abdomen and tried to strangle her but she somehow managed to save herself. She went to her father and was got medically examined.

3. On the basis of the complaint as submitted by the complainant on 25.01.2019, a case under Section 323, 406 and 498-A of IPC was registered. Investigation proceedings were initiated. During investigation, the accused Rinku who is her husband and parents-in-law Krishna Devi and Babu Ram were arrested and were subsequently released on bail. The remaining persons named in the FIR were found to be innocent and they were not arrested and challaned. Their names were kept in column No.2 of the challan report. During trial, the petitioner-complainant moved an application under Section 319 of Cr.P.C. for summoning the above named Nisha, Gulab, Chandni, Rohit and Vinod as additional accused for facing trial along with the accused already arraigned. The said application had been

dismissed by the learned trial Court vide order dated 24.01.2023.

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4. It is argued by learned counsel for the petitioner that the impugned order was liable to be set aside as the same was not sustainable in the eyes of law. The learned trial Court committed a grave error in dismissing the application filed by her. There was overwhelming evidence in the form of her deposition as made on oath that the proposed accused along with the accused already facing trial had subjected her to cruelty on account of demand of dowry and had also extended beatings to her. Therefore, he argued that the petition deserves to be allowed.

5. I have heard learned counsel for the petitioner at considerable length and have carefully gone through the material which has been placed on record.

6. Section 319 of Cr.P.C. empowers the Court to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with other accused. The principle of law with reference to exercise of jurisdiction under this Section has been well settled by the Constitution Bench of Hon'ble Supreme Court in a celebrated pronouncement cited as ***Hardeep Singh and others Vs. State of Punjab and others, (2014) 3 SCC 92***, wherein it was observed that the power under Section 319 Cr.P.C. is discretionary and an extraordinary power. It has 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 material placed before the Court that such power

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should be exercised and not in a casual and cavalier manner. It was also observed 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 strong evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as has been established 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 of Cr.P.C.

7. Reference can also have made to a recent pronouncement of Hon'ble Supreme Court cited as ***Sagar Vs. State of UP and another, (2022) 6 SCC 389*** wherein the Apex Court observed as under:-

“ 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 notice 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 un rebutted, would lead to conviction.... ”

8. It is also well settled proposition of law that an order under Section 319 of the Cr.P.C. 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

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the purpose. The evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction and for this purpose, the Courts are required to apply stringent tests one of such tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

9. On applying the above discussed principles of law to the peculiar facts and circumstances of the present case, I am of the considered opinion that the impugned order does not deserve to be interfered with. No doubt, in her complaint which has culminated into FIR, the petitioner had taken the names of the proposed accused. However, during investigation which was conducted by the police, these persons were found to be innocent and their names were kept in column No.2 of the challan report. On perusal of statement of the petitioner, (Annexure P-6) as recorded in Court, it is revealed that she has made material improvements in her version as given in the FIR since there was no allegation therein that the proposed accused Vinod had come to her house on 01.01.2019 and had hurled any abuses to her. Neither in her complaint nor in her sworn deposition, she had alleged that she had been assaulted by the proposed accused Vinod at any point of time as on 01.01.2019 or further that any demand of dowry had been made by him. Further no allegation qua commission of offences punishable under Sections 323, 406 and 498-A of IPC had also been attributed to him. As per her own version, he was simply a mediator to the marriage of the petitioner with accused Rinku who is already facing trial. On the basis of the allegations as levelled in the FIR or even on the basis of the sworn deposition made by the petitioner as against the proposed accused Vinod which are general and vague in nature, in my considered opinion, no ground

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for proceeding against him and issuing process had been made out and, therefore, it is held that the learned trial Court had committed no error in declining the prayer made by the petitioner for summoning him as an additional accused.

10. Further, so far as Nisha and Chandni, sister-in-law of the petitioner and Gulab and Rohit their respective husbands are concerned, though there are allegations that all of them along with the accused already arraigned had assaulted her as on 01.01.2019, however, it is revealed from record that the petitioner had reported the matter about the alleged incident to the police only on 25.01.2019 i.e. after a gap of 25 days and FIR was registered on 13.04.2019. The allegations as levelled by the petitioner against these persons in her sworn deposition are nothing but simple reiteration of the version as given at the time of FIR. Undoubtedly, the trial Court was competent to exercise its power even on the basis of the said statement recorded before it in examination-in-chief. However, from a perusal of the testimony of the petitioner, it is explicit that no evidence what to say some stronger evidence than mere possibility of complicity of the proposed accused in the subject offences has come on record. The evidence so led cannot be considered as cogent and strong evidence. Except levelling sweeping allegations of bringing less dowry and pressurizing her to bring Rs.8 lacs and her being assaulted there is no other allegation. The particular date, month and year when such demands had been made have not been mentioned either in the FIR or in her sworn deposition. The allegations which have been levelled against the proposed accused were general and vague in nature. It is well settled proposition of law that mere casual references of names of family members of the husband in a matrimonial

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dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of the experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute. Reference in this regard can be made to **Geeta Mehrotra and another vs State of UP and another (2012)10 SCC 741**. It is equally well settled that the Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes. 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. Reference in this context can be made to ***K. Subba Rao and others versus State of Telangana and others***, (2018) 14 SCC 452 wherein the Hon'ble Supreme Court had made a similar observation. As such, the allegations do not make out a case that she was subjected to cruelty by the proposed accused on account of any demand of dowry.

11. Further, either from the allegations of FIR or from the evidence of the petitioner, it is made out that either of the proposed accused was entrusted with any property belonging to the petitioner and had criminally misappropriated the same. The allegations qua her being assaulted at their hands are also general and vague in nature. The proposed accused namely, Nisha and Chandni are sisters of her husband who are admittedly living separately in their own matrimonial homes, from the victim and her husband. On the basis of the omnibus and general allegations as levelled, the complicity of the proposed accused in the subject offences cannot be presumed. As such, in my opinion, the trial Court should have restrained from exercising the power under Section 319 of Cr.P.C. and that is what

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exactly has been done by it. As such, I do not find any valid reason to take a view different from that of learned trial Court. Accordingly, no ground to interfere in the impugned order has been made out.

- 12. Therefore the petition is dismissed.
- 13. Miscellaneous application(s), if any, also stand disposed of.

08.11.2023
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No