

Neutral Citation No.2023:PHHC:150775

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

Criminal Revision No.2701 of 2023 (O&M)

Date of decision: 23.11.2023

Bhupinder Kaur

.... Petitioner

Versus

State of Punjab and another

.... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present : Mr. Ashdeep Singh, Advocate,
for the petitioner.

MANISHA BATRA, J.

CRM-49348-2023

This is an application for condonation of delay of 42 days in filing the present revision petition.

For the reasons mentioned in the application, the same is allowed and the delay of 42 days in filing the present revision petition is condoned.

Criminal Revision No.2701 of 2023 (O&M)

1. The instant revision petition has been filed by the petitioner under Section 397 and 401 of Code of Criminal Procedure for setting aside the order dated 15.07.2023 passed by learned Additional Sessions Judge, Gurdaspur, whereby an application filed under Section 319 of Cr.P.C. by the petitioner for summoning Paramjit Kaur i.e. first wife of accused Sukhdev Singh, as additional accused had been dismissed.

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2. Brief facts of the case relevant for the purpose of disposal of this petition are that the FIR No.168 was registered on 12.11.2022 at Police Station Shri Hargobindpur on the basis of a written complaint submitted by the petitioner-complainant Bhupinder Kaur alleging therein that she had been previously married to one Rajinder Singh and two daughters were born out of the wedlock. One of the daughters was residing with her. She had separated from her first husband. The accused Sukhdev Singh induced her to perform marriage with him and on the allurments given by him, she had performed marriage with him in January 2021. She was having some money which was given by her first husband at the time of dissolution of marriage. Shortly after the marriage, the accused Sukhdev Singh made the complainant part with that money and purchased a house in his name. He had previously projected that he was a divorcee but subsequently his behaviour changed and he started visiting his first wife and children. Gradually, he sold 14 tolas of gold belonging to the complainant and the sale amount was given by him to his wife and children. He also started keeping an evil eye on her daughter and wanted to have an illicit relationship with her. On resistance being made by her, he had started extended beatings to her regularly and also used to demand money. She alleged that Paramjit Kaur who was first wife of Sukhdev Singh was hand in glove with him in all the misdeeds committed by the latter. On the basis of this complaint, a case under Sections 354 and 498A of IPC read with Section 8 of Protection of Children from Sexual Offences Act, 2012 (For short "POCSO Act") was registered against the accused Sukhdev Singh. Investigation proceedings were initiated after the accused Sukhdev Singh was arrested. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C.

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was presented in the Court and presently accused Sukhdev Singh is facing trial for commission of the aforementioned offences.

3. After recording the sworn deposition of the petitioner in the Court, she had moved an application under Section 319 of Cr.P.C. before learned trial Court for summoning Paramjit Kaur ex wife of the accused Sukhdev Singh as an additional accused by making allegation that she had conspired with the accused Sukhdev Singh to extract money from the petitioner-complainant. The learned trial Court vide order dated 15.07.2023 has dismissed the said application.

4. It is argued by learned counsel for the petitioner that the impugned order dated 15.07.2023 is not sustainable in the eyes of law and is liable to be set aside as overwhelming evidence in the form of testimony of the petitioner has come on record of the trial Court to prove that Paramjit Kaur was involved with the accused Sukhdev Singh in the commission of offences for which he is facing trial and had entered into a conspiracy with him to induce the petitioner to part with huge amount of money. Therefore, he has argued that the impugned order is liable to be reversed, the revision petition deserves to be accepted and Smt. Paramjit Kaur is liable to be summoned and arraigned as additional accused to face trial along with the accused Sukhdev Singh already facing trial.

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

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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 warrants. 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 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

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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 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 principal of law to the peculiar facts and circumstances of the present case, this Court is of the considered opinion that the learned trial Court committed no illegality in dismissing the application filed by the petitioner due to the reason that in her complaint as submitted before the police for the first time that has culminated into lodging of FIR, the petitioner had made only a casual reference to the name of the proposed accused Paramjit Kaur by saying that the accused Sukhdev Singh had started visiting the house of his ex wife sometime after performing marriage with her and by further saying that whatever was done by the accused Sukhdev Singh, his first wife had a hand in the

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same. On the basis of these allegations, obviously, no case for initiating any action as against the proposed accused had been made out. The petitioner had then taken the name of Paramjit Kaur in her statement subsequently recorded before the police during the course of inquiry. However, it is revealed from the record that Paramjit Kaur had been found to be innocent and had not been arrested and challaned. In her sworn deposition, as recorded in the Court, the petitioner deposed that various act as attributed to accused Sukhdev Singh of inducing her to perform marriage with her, extracting money from her and then committing wrong acts with her daughter, had been committed in connivance with his first wife i.e. Paramjit Kaur. The allegations so levelled are general and sweeping allegations. No specific act and conduct has been attributed by the petitioner to the proposed accused to show her complicity in the crime for commission of which the accused Sukhdev Singh is facing trial. Mere casual reference that the proposed accused was conniving with the accused Sukhdev Singh does not justify taking any cognizance against her. The evidence led by the petitioner cannot be considered as strong and cogent evidence.

10. As discussed above, power under Section 319 of Cr.P.C. can be exercised only where strong and cogent evidence occurs against a person from the material laid before the Court and not in a casual and cavalier manner. On applying the test that the evidence so produced is of such nature which can be stated to be more than prima facie case as existing at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction, the testimony of the petitioner on being subjected to the anvil of this parameter does not meet the requirement. There is absence of satisfaction in

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the evidence led by the petitioner of the extent that the evidence produced on record would lead to conviction. As such, in my considered opinion, there was no scope for the trial Court under Section 319 Cr.P.C. to form any opinion as to the guilt of the proposed accused and in the absence of such satisfaction, the learned trial Court rightly refrained itself from exercising power under Section 319 Cr.P.C. as the satisfaction desirable for summoning the proposed accused under Section 319 Cr.P.C. was not found on record. As such, no irregularity or illegality can be stated to have been committed by the learned trial Court while passing the impugned order and dismissing the application of the petitioner which was passed after analyzing the facts of the case in proper perspective. This Court, therefore, has no reason to interfere with the findings as given by learned trial Court.

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

23.11.2023
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned:	Yes/No.
Whether reportable :	Yes/No