

Neutral Citation No.2023:PHHC:139062

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRR No.2420 of 2023
Date of decision: 31.10.2023
Reserved on: 19.10.2023

Rubi

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Mohit Sadana, Advocate,
for the petitioner.

MANISHA BATRA, J.

1. The instant revision petition has been filed by the petitioner challenging the order dated 11.04.2023 as passed by learned Judicial Magistrate, Moonak in case bearing No.CHI/157/2019 titled as ***State Versus Deepak Kumar*** arising out of FIR No.25 dated 18.03.2019, registered under Sections 406 and 498-A read with Section 201 of IPC at Police Station Khanouri, whereby an application filed by the revision petitioner-complainant for summoning Amit Kumar, Mahinderjit, Rekha Rani and Deepak Kumar as additional accused, had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that FIR No.25 was registered on the basis of a written complaint filed by the revision petitioner at Police Station Khanouri alleging therein that she was married with accused Deepak Kumar on 25.01.2009. As per the demand made by her in-laws, big amount of

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money was spent in the marriage and gold ornaments were given by her parents to her in-laws. The accused Deepak Kumar and his family members were however, not satisfied with the same and they started taunting and harassing her on account of bringing less dowry. She was forced to bring money from her parents time and again and due to non-fulfillment of their demands, she was harassed even more. Ultimately, she was thrown out of her matrimonial house after she had suffered a miscarriage. After registration of the FIR, investigation proceedings were initiated. The accused Deepak Kumar was arrested and released on bail and presently he is facing trial for commission of offences punishable under Sections 406, 498-A and 201 of IPC. The revision-petitioner had named four more persons in the FIR who are Mahinderjit, her father-in-law, Rekha Rani mother-in-law, Amit Kumar brother-in-law and Deepak Kumar, son-in-law of maternal uncle of her husband. However, they were not arrested and challaned by the police. It has further come on record that after recording her statement in the Court, the petitioner had moved an application for summoning the aforementioned four persons as additional accused and to direct them to face trial along with the accused already arraigned. However, the learned trial Court dismissed the said application vide order dated 11.04.2023 and feeling aggrieved from the same, she has filed this petition.

3. It was argued by learned counsel for the petitioner that the impugned order was not sustainable in the eyes of law as the learned trial Court did not appreciate the evidence as recorded by the petitioner in

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proper perspective and erred in holding that no case for summoning the proposed additional accused was made out. The proposed accused were not only named in the FIR but her sworn deposition as recorded in the Court also proved their complicity in the crime of subjecting the petitioner to cruelty on account of unlawful demand of dowry and qua mis-appropriating her *Istridhan*. Hence, it was argued that impugned order was liable to be set aside, the revision petition deserved to be accepted and it was urged that a direction be given to learned trial Court to summon the proposed additional accused to face trial along with Deepak accused already arraigned and facing trial.

4. Having heard learned counsel for the revision petitioner at length, this Court finds that the issue that arises for determination in the present revision petition is whether order impugned is within the parameters established by law for exercise of jurisdiction under Section 319 of Cr.P.C.? Section 319 unquestionably confers power on the trial Court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of evidence so lead during the trial. On the degree of satisfaction for invoking power under Section 319, though the test of *prima facie* case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction is much stricter. The parameters for exercise of jurisdiction under this provision have been considered time and again by Hon'ble Apex Court. In a

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celebrated pronouncement of Constitutional Bench of Hon'ble Supreme Court in *Hardeep Singh Versus State of Punjab and others*, (2014) 3 SCC 92, such parameters had been considered in detail and it was observed that powers under Section 319 of Cr. P.C. are discretionary and extraordinary powers. The same are to be exercised sparingly and only in those cases where the circumstances of the case so warrant. 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. It was held that the test that has to be applied is one which is more than *prima facie* case as 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. 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 the complicity. It is evident that the powers under Section 319 can be exercised against a person not subjected to investigation, or a person placed in column No. 2 of the chargesheet and against whom a cognizance has not been taken or even against a person who has been discharged. It was also observed that the power under Section 319 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 of that offence. It is only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised.

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5. On translating the aforesaid principles of law with their application to the peculiar facts of the instant case, this Court gathers an impression that the learned trial Court had committed no irregularity or illegality in dismissing the application as filed by the petitioner. No doubt, the proposed accused were named in the FIR. However, during investigation which was conducted by the police, they were found to be innocent and their names were kept in column No. 2 of the challan report. The evidence which was recorded by the petitioner during trial was nothing more than the statement which was already there under Section 161 of Cr.P.C. or in the form of her complaint. No doubt, 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 her statement, it is clearly revealed 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. Except reiterating the version as given at the time of FIR, nothing more had been done. The evidence led by the petitioner cannot be considered as a strong and cogent evidence. No specific act and conduct which amounted to subjecting the petitioner to cruelty on account of unlawful demand of dowry had at all been attributed to the proposed accused namely, Deepak Kumar who is son-in-law of maternal uncle of husband of the petitioner also known by the same name. There are omnibus and general allegations as against the remaining proposed accused i.e. father-in-law, mother-in-law and brother-in-law of the petitioner.

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6. It may also be observed that though it was alleged in the FIR and it was deposed by the petitioner that different gold ornaments were given to members of her in-laws family including the proposed accused as per their demand but it was not explained as to which of the particular proposed accused had raised what particular demand and on which particular date. It cannot be ignored that giving of customary gifts at the time of marriage cannot be stated to be demand of dowry. On going through the deposition made by the petitioner in Court, it becomes clear that she had not levelled any specific allegation against the particular proposed accused and they were general and vague in nature. She did not state that there was any specific demand of dowry by the proposed accused and about the nature of the cruelty which was inflicted upon her by them on account of fulfillment of that demand. Her statement can also not be stated to be enough to prove that any dowry article was entrusted to the proposed accused and they had criminally misappropriated the same. It is well settled proposition of law that mere casual reference of names of family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of 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. 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

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instances of their involvement in the crime are made out. Reference in this regard can be made to *Ramesh and others versus State of Tamil Nadu*, (2005) 3 SCC 507; *Geeta Mehrotra and another Vs. State of U.P. and another*, (2012)10 SCC 741 and *K. Subba Rao and others versus State of Telangana and others*, (2018) 14 SCC 452.

7. In view of the discussion as made above, it emerges that a prima facie case was to be established by the petitioner from the evidence led before learned trial Court but simultaneously it required much stronger evidence than a mere probability of the complicity of the persons against whom the petitioner had deposed. The test that had to be applied was of a degree of satisfaction which was more than that of a *prima facie* case as established at the time of framing of charge, but short of satisfaction to an extent that the evidence, if it goes unrebutted, may lead to conviction of the proposed accused. In the absence of such satisfaction, in my opinion, the trial court should have restrained from exercising the power under Section 319 of Cr.P.C. and this is what had exactly been done by it. As such, I do not find any valid ground to take a view different from the learned trial Court. No ground to interfere has accordingly been made out, therefore, the petition is dismissed.

31.10.2023
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No