

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

111

CRR-2497-2023(O&M)
Date of Decision: 03.11.2023

SARVESH KUMAR ...Petitioner
Versus
STATE OF HARYANA AND ORS ...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Jasdeep Singh Walia, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

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 10.08.2023 passed by learned Additional Sessions Judge-cum-Judge, Special Court for Heinous Crime against Women, Hisar, whereby an application filed under Section 319 of Cr.P.C. by the petitioner for summoning Hari Om Sharma and Mahima as additional accused had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the FIR No. 814 dated 10.11.2021, had been registered under Section 304-B IPC on the basis of written complaint submitted by the present petitioner alleging therein that his daughter (Shrishti) had got married with Ravi Kant Sharma (already arraigned as accused and facing trial) on 01.12.2016. An amount of more than Rs.20 lacs had been spent at the time of her marriage by the petitioner. Soon after the marriage of his daughter, the behavior of her husband and other members of the in-laws

family was not good, and they started harassing her on account of bringing

CRR-2497-2023(O&M)

insufficient dowry and pressurized her to bring an amount of Rs.10 lacs in cash. The daughter of the petitioner had apprised about this fact to him and other family members, and the petitioner had requested them to not to harass her. It was alleged that the accused Ravi Kant Sharma and the daughter of the petitioner had started living in a rented accommodation in Hansi separately. It was alleged that the family members of accused-Ravi Kant Sharma still used to instigate him to torture Shrishti. On 21.10.2021 at about 10:00 PM, the daughter of the petitioner had made a telephonic call to her younger brother and had expressed fear of happening of some untoward incident with her and had also called upon him to take her away while saying that otherwise she would be killed on the same night. The son of the petitioner received a telephonic call regarding death of the victim. The petitioner had rushed to the matrimonial home of his daughter. The postmortem examination of dead body of the victim, and inquest proceedings were conducted. The petitioner alleged that the accused Ravi Kant Sharma, his father Hari Om Sharma and sister Mahima had subjected the victim to cruelty and had caused her dowry death. On his complaint, a case under Section 304-B of IPC was registered and investigation proceedings were initiated. During investigation, the accused Ravi Kant Sharma was arrested. The proposed accused namely Hari Om Sharma and Mahima were found to be innocent and they had not been arrested and challaned, and their names were kept in Column No.2 of the challan report. After completion of necessary investigation and usual formalities, challan was presented against the accused-Ravi Kant Sharma and presently he is

CRR-2497-2023(O&M)

facing trial for commission of offences punishable under Section 304-B and 498-A of IPC. During the pendency of the trial, sworn deposition of the present petitioner had been recorded and thereafter he moved an application under Section 319 of Cr.P.C. for summoning the above-named Hari Om Sharma and Mahima as additional accused. The said application had however, been dismissed by the Learned Special Court vide order dated 10.08.2023.

3. Feeling aggrieved from the order of learned Special Court, the present revision petition has been filed by the petitioner.

4. Learned counsel for the petitioner submitted that the impugned order as passed by learned Special Court was not sustainable in the eyes of law and was liable to be set aside, as over-whelming evidence in the form of testimony of the petitioner had come on record of learned Trial Court to prove that the proposed accused Hari Om Sharma and Mahima were involved in the unnatural death of the victim, which had taken place within a period of seven years from the date of her marriage and was a dowry death. In fact, they along with the accused already facing trial had subjected the victim to cruelty continuously on account of unlawful demand of dowry and had harassed her to such an extent that the victim had ended her life. With these broad submissions, it was urged that the impugned order was liable to be reversed; the revision petition deserved to be accepted; and the proposed accused were liable to be summoned and arraigned as additional accused to face trial along with the accused already facing trial. To fortify his arguments, learned counsel for the petitioner has placed reliance upon

CRR-2497-2023(O&M)

authorities cited as **Gulshan Vs State of Uttar Pradesh and Ors. 2023(3)**

R.C.R. (Criminal) 360 Rajbir Singh Vs State of Haryana 2006(6) R.C.R.

(Criminal) 195 Gurmej Singh and Anr Vs State of Punjab Case No.

CRR-1559-2022 date of Decision 22.02.2023 for commission of offences

punishable under Section 498-A and 304-B of IPC.

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 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

CRR-2497-2023(O&M)

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 be 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 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

CRR-2497-2023(O&M)

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, this Court is of the considered opinion that the learned Special Court committed no illegality in dismissing the application 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 the Column No.2 of the challan report. On perusal of statement as recorded by the petitioner before learned trial Court (Annexure P-4), it is clearly revealed that the same was nothing more than the allegations as made in the complaint as filed by the petitioner and except reiterating the version as given at the time of FIR, nothing more had been done by the petitioner. 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 his statement, it is explicit that no evidence what to say some stronger evidence than mere possibility of complicity of the proposed accused in the subject offence has come on record. The evidence led by the petitioner cannot be considered as strong and cogent evidence. The victim was married with the accused facing trial as on 01.12.2016 and had died after about 5 years. Except leveling a sweeping allegation that the accused Ravi Kant Sharma and his family members taunted her for bringing less dowry and pressurized her to bring Rs. 10 lacs, there was no other allegation. The particular date, month and year when such demand was made

CRR-2497-2023(O&M)

had neither been mentioned in the FIR, nor same has been mentioned in the sworn deposition of the petitioner. 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 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** wherein it was observed so. It is equally well settled that the Courts should be careful in proceeding against the distinct 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 **Subba Rao and Ors vs State of Telengana and Ors 2018 14 SCC 452** wherein the Hon'ble Supreme Court had made a similar observation.

10. The citations of law as relied upon by the petitioner are distinguishable on facts and hence do not help the petitioner. No specific instances of either subjecting the victim to cruelty by the proposed accused had been quoted nor from the allegations in the FIR as well as from the sworn deposition of the petitioner, it has been made out as to whether the proposed accused, who were admittedly living separately from the victim

and her husband, had participated in any manner in the incident causing death of the victim. Though in his sworn deposition, PW-1/petitioner alleged that there were ligature marks on her neck due to which it was suspected that the victim had been murdered, but the postmortem examination report does not show that. On the basis of the omnibus and general allegations as leveled against the proposed accused, no evidence of such nature on the basis of which complicity of the proposed accused in the subject crime could be presumed has come on record. On the basis of mere probability of their complicity, they could not be summoned to face trial along with the co-accused already arraigned. As such, in my opinion, the trial Court should have restrained from exercising the power under Section 319 of Cr.P.C. and this is what 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.

11. Therefore the petition is dismissed.

November 03, 2023
himanshu

(MANISHA BATRA)
JUDGE

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