

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

207

CRM-M-4323-2020 (O&M)

Date of order: 12.03.2024

Swaran Singh @ Swarn Singh & Others

.....Petitioner(s)

Vs.

State of Punjab & Another

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. J.P. Devgan, Advocate
for the petitioners.

Mr. Kunwarbir Singh, AAG Punjab.

None for respondent No.2.

Nidhi Gupta, J.

Challenge in the present petition is to order dated 20.12.2019 (Annexure P3) passed by learned Additional Sessions Judge, Hoshiarpur whereby, in an application moved by the prosecution under Section 319 Cr.P.C. in case FIR No.183 dated 27.11.2018 registered under Section 306 IPC at Police Station Dasuya, District Hoshiarpur, Punjab (Annexure P1), the petitioners have been summoned to face trial.

2. Learned counsel for the petitioners inter alia submits that petitioner No.1 is the father-in-law, petitioner No.2 is the mother-in-law, petitioner No.3 is the sister-in-law (Jethani) and petitioner No.4 is the sister-in-law (Devrani) of the deceased daughter of the complainant/respondent No.2 herein. Learned counsel at the very outset submits that petitioner No.1 has expired and therefore, present petition stands abated qua him.

3. As regards the remaining petitioners No.2 to 4, it is submitted that son of petitioner No.2 was married to daughter of respondent No.2/complainant on 26.01.2008. One daughter was born out of this wedlock on 07.01.2012. The date of incident is 26.11.2018 when

daughter of the complainant died by consuming poison. Learned counsel states that daughter of the complainant and son of petitioner No.2 were happily married during this period of almost 11 years. No complaint of any kind was filed either by the deceased or by the complainant side during this period regarding any harassment on part of the petitioners and their family in respect of dowry demand or any other kind of harassment. The cause of death of daughter of the complainant is consumption of poison. However, the petitioners have nothing to do with the same.

4. Learned counsel further submits that in the FIR filed by respondent No.2, 6 persons including present petitioners were named as accused. In the inquiry conducted by the police, present petitioners were exonerated and challan was filed only against husband and brother-in-law/devar of the deceased. It has been admitted by the complainant during inquiry that neither he nor his daughter had ever lodged any complaint regarding harassment by her in-laws nor they conveyed any information regarding alleged harassment before any Panchayat, respectable persons and police authorities. Admittedly, the petitioners were declared innocent in inquiry conducted by the DSP, Sub-Division Dasuya.

5. It is further submitted that perusal of present FIR shows that most of the allegations have been made against husband of the deceased. Only general, vague and omnibus statements have been made against the petitioners to the effect that the deceased daughter of the complainant *"was harassed by his son-in-law Iqbal Singh, father-in-law Swaran Singh, mother-in-law Shinder Kaur, brother-in-law Manjinder Singh, sister-in-law Rajji @ Rajni Bala wife of Manjinder Singh, and sister-in-law Manpreet Kaur wife of Nirmal Singh residents of Meerpur and she has consumed some poisonous substance on 26.11.2018 and has committed suicide. Legal action may kindly be taken against them"*. It is submitted that besides the above, no allegation whatsoever has been made against the petitioners.

6. It is further stated that a purely baseless and unfounded allegation has been made in the complaint, reproduced at page 3 of the petition, stating that husband of the deceased namely Iqbal Singh was having illicit relations with his *bharjai* Manpreet Kaur/petitioner No.3

herein. However, as already stated hereinabove, in the investigation conducted by the police officials the said allegations were found to be false and therefore, 4 of the 6 accused i.e. present petitioners were exonerated and challan was filed only against husband and brother-in-law/devar of the deceased. The FIR reveals that same allegations as made in the complaint have been repeated therein, however, allegation regarding illicit relations of petitioner No.3 with husband of the deceased, does not find mention in the FIR.

7. It is further submitted that petitioners No.3 and 4 are the married sisters-in-law of the deceased and they had no connection with the matrimonial home of the deceased. Petitioner No.4 and her husband were living separately at Dasuya. It has also come on record that petitioners No.1 and 2 were living with family of their son Nirmal Singh, who is working in Muscat.

8. Per contra, learned State Counsel opposes the prayer and contentions made on behalf of the petitioners and submits that serious and grave allegations have been made against the petitioners. It is submitted that the deceased did not bear a male child and for this reason she was taunted and harassed by the petitioners and other accused persons. It is stated that accordingly, there is no error in the impugned order (Annexure P3) and the present petition deserves to be dismissed.

9. No other argument is made on behalf of the parties.

10. I have heard learned counsel for the parties and perused the case file in detail.

11. Perusal of record of the case shows that specific allegations have been made by the complainant against the accused in his complaint, the relevant part of which is reproduced at page 4 to 6 of the petition, on the basis of which, present FIR was registered. Perusal of the complaint reveals that in particular, very serious allegations have been made against petitioner No.3 to the effect that she was in an illicit relation with husband of the deceased. Furthermore, in the FIR, Petitioners have been named individually and specifically and it has been clearly stated therein that the petitioners harassed and tortured the deceased for dowry as a result of which, she consumed poison on 26.11.2018 and committed

suicide. In my view, allegations of such nature cannot be brushed aside without proper inquiry and investigation/trial. No doubt, the petitioners have been exonerated in the investigation conducted by the police, however, the same is unreliable as perusal of challan (Annexure P2) reveals that although it has been specifically alleged in the complaint at page 5 of the paper book that husband of the deceased was in an illicit relation with Manpreet Kaur/petitioner No.3, however the same is not reflected in the FIR, nor is any finding produced regarding this allegation in the challan.

12. It has further come on record that husband of the deceased namely Iqbal Singh works in Army and he was on leave at home for one month as he was constructing his house. Perusal of the impugned order shows that the complainant in his statement/testimony as PW1 has deposed that the entire family of the petitioners used to harass the daughter of the complainant and used to taunt her as she had failed to deliver a male child. He has further deposed that he went to the house of his daughter on 24.11.2018, where all the 6 accused persons demanded money from him for construction of the house; and they abused the petitioner's daughter and told her that she would be killed if the complainant did not give money to them. Thereafter, on 26.11.2018, he received telephonic call at night that his daughter was not well and was admitted to Mehngi Hospital, Dasuya. By the time, he reached the hospital, his daughter had already died and her body was cold. It is in this background that the learned trial Court in view of the nature of allegations noticed above, has allowed the application filed by the prosecution under Section 319 Cr.P.C. Learned Additional Sessions Judge, Hoshiarpur has relied upon judgment in "**Rajendra Singh Vs. State of U.P. & Another**" 2007 (3) RCR 1022, wherein it has been held as under:-

*"15 Section 319(1) which is relevant for our purpose reads:
"319. Power to proceed against other persons appearing to be
guilty of offence-*

*(1) Where, in the course of any inquiry into, or trial of, an
offence, it appears from the evidence that any person not
being the accused has committed any offence for which such
person could be tried together with the accused, the Court*

may proceed against such person for the offence which he appears to have committed.”

13. In this regard, reference may also be made to judgment of the Hon’ble Supreme Court in the case titled as “**Sarabjit Singh Vs. State of Punjab, (2009) 16 SCC 46**: wherein it has been held that:

“... 17. 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 exercise of the 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”

14. The aforementioned view has further been upheld by the Hon’ble Supreme Court in the case of “**Hardeep Singh Vs. State of Punjab and Others, (2014) 3 SCC 92**”, wherein it has been held that power under Section 319 Cr.P.C. is a discretionary and extraordinary power, which has to be exercised sparingly and cautiously only in those cases where the circumstances so warrant. In this regard, the following observations and guidelines issued by the Hon’ble Supreme Court in **Hardeep Singh’s case (supra)** are apposite: -

“110. We accordingly sum up our conclusions as follows :

Question Nos. 1 & III

Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND

Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused. Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the charge-sheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No. II

Q.II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination, or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. IV

Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No. V

Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319

Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh”.

15. Needless to say, this Court cannot undertake an enquiry into the veracity of the allegations levelled against the petitioners. Prima facie the allegations are serious and grave in nature. As such, the truth or otherwise of the allegations can only be determined and established upon trial. As such, I find that no grounds are made out that warrant the exercise of such extraordinary power.
16. Learned counsel for the applicant is unable to dispute the abovesaid factual and legal position. Accordingly, the present petition is hereby **dismissed**.
17. Pending application(s) if any also stand(s) disposed of.
18. However, it is made clear that nothing stated above shall be construed as an expression of opinion on the merits of the matter.

12.03.2024
Sunena

(Nidhi Gupta)
Judge

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