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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

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Date of decision: 06.05.2024

KAMIYA (SIC) REAL NAME HARSHITA SHARMA

... PETITIONER

V/s

STATE OF HARYANA

... RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Saurabh Sharma, Advocate for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana.

Mr. D.S. Virk, Advocate for the respondent.

SUMEET GOEL, J.

1. Challenge in this criminal revision petition is made to the order dated 23.11.2021 passed by learned Additional Sessions Judge, Kurukshetra, in an application under Section 319 of the Code of Criminal Procedure, filed by the complainant and forwarded by the learned Public Prosecutor for the State.

2. Facts germane to the adjudication of dispute involved in the present case are that the complainant lodged an FIR bearing No.95, dated 25.01.2020, under Sections 304-B and 34 of the Indian Penal Code, registered at Police Station City Thanesar, Kurukshetra. The case alleged in the FIR is that the marriage of the daughter of complainant was performed on 03.03.2018 with accused Manish Sharma, who is in custody. The complainant gave sufficient dowry, but the husband, father-in-law, mother-in-law, and the sister-in-law (petitioner herein) of his

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daughter were not happy with the dowry articles and used to torture his daughter for bringing less dowry. The daughter of complainant namely Priyanka called him telephonically on 24.01.2020, and informed him that since her in-laws were beating her, therefore, she should be taken from there. The complainant told her daughter that they will come next day i.e. on 25.01.2020. However, on 25.01.2020 he received phone call from his son-in-law, informing that there had been a scuffle with his daughter. Later on, Ajit Sharma uncle of his son-in-law informed him that he need not come as the matter has been resolved. However, again at 3.00 PM Ajit Sharma informed him that his daughter committed suicide by hanging. With these allegations the FIR was registered against the husband, father-in-law (since deceased), mother-in-law, and sister-in-law (petitioner herein).

3. During the course of investigation police arrested the husband of the deceased on 06.02.2020, after completion of investigation challan against him was presented. However, the police upon further investigation of the case arrested accused namely Kailash Sharma and presented supplementary Challan under Section 173(8) of the Cr.P.C. The present petitioner (sister-in-law) of the deceased was declared innocent in the matter by the Police.

4. During the course of recording of evidence at the trial stage, prosecution examined the complainant – father of deceased as PW-1. His Examination-in-Chief was recorded in the case on 08.11.2021. In his statement in the Court, he inter-alia deposed that he had given sufficient dowry at the time of marriage of his daughter with Manish Kumar. But Manish Kumar, his father Ashok Kumar (since deceased), his mother Kailash Rani, and his sister Kamya were not satisfied with the dowry articles given by him. He further deposed that the sister-in-law of the deceased, namely Kamya (petitioner herein) harassed his daughter,

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whenever she visited her parental home at Kurukshetra, for not bringing sufficient dowry. He stated that his daughter telephonically informed him in the evening of 24.01.2020 that all the accused were harassing her and beating her.

5. After recording of the Examination-in-Chief of the complainant to above effect, same day the application under Section 319 of Cr.P.C. was filed to summon the sister-in-law of the deceased (petitioner) herein as additional accused in the case. The learned Additional Sessions Judge, Kurukshetra while deciding the application dated 08.11.2021, vide order dated 23.11.2021 summoned the sister-in-law of the deceased (petitioner herein) as additional accused to face trial in the matter.

6. The petitioner has assailed the order dated 23.11.2021 passed by the learned Additional Sessions Judge, Kurukshetra with the arguments that the petitioner is married to Mr. Harpal Sharma son of Sh. Ved Parkash resident of Village Jorasi Kalan since 29.04.2005 i.e. almost 15 years prior to the date of incident of death of daughter of the complainant. She has four children; eldest (boy) aged 15 years, younger to him (girl) aged 13 years, and youngest one (boy) aged 5 years. The house of the petitioner is more than 40 kms away from her parental house i.e. house of deceased. In these facts she is deeply engrossed with her own matrimonial obligations and had no time to interfere in the matrimonial life of the deceased.

7. While referring to the statement of PW-1 in his Examination-in-Chief it is argued that the allegations made in the said statement of PW-1 are vague, sweeping, bald and generic. No specific instance, date, time and place qua the overt act attributed to the petitioner is given by the PW-1 in his deposition before Court. It is argued that the standard of evidence required to summon an accused petitioner under Section 319 of

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Cr.P.C. being that of more than prima facie case, has not been met with in the present case. As such the dismissal of the impugned order dated 23.11.2021 passed by the learned Additional Sessions, Judge, Kurukshetra is prayed for.

8. To the contrary it is argued on behalf of the State assisted by the learned counsel for the complainant that the impugned order being elaborate, detailed and speaking order has touched upon all the vital aspects of the case. The impugned order has been passed fully in consonance with the statutory requirements of provisions of 319 of the Cr.P.C. It is submitted that the evidence of the PW-1 complainant in the case fully makes out a case for summoning the petitioner as additional accused on the basis of contents thereof. The learned trial Court after due appraisal of the evidence in the shape of Examination-in-Chief of PW-1 has correctly held that there is sufficient and strong material to summon the petitioner as additional accused.

9. I have heard the learned counsel for the parties and have gone through the record of the case in detail.

10. The provisions of Section 319 of the Cr.P.C. are elaborately discussed and adjudicated qua its scope and ambit by the Constitution Bench of Hon'ble Supreme Court of India, in case of **Hardeep Singh versus State of Punjab and Others, 2014 (1) RCR (Criminal) 623**, wherein it was held as under:

“Thus we hold 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 stronger evidence than mere probability of his complicity. The test that 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. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 of Cr.P.C. to form any opinion as to the guilt of the accused."

11. In the light of the above quoted ratio of law laid down by the Constitution Bench of the Hon'ble Supreme Court, when the statement of PW-1 in his Examination-in-Chief, recorded by the learned trial Court, is evaluated, it certainly falls short of the litmus test of 'more than prima facie case'.

12. A thorough perusal of the Examination-in-Chief of PW-1 makes it clear that though he has named the petitioner as accused in causing harassment to the deceased in context of demands of dowry but no specific instance of any such harassment has been mentioned by him in his statement. All he stated is that, "*the sister-in-law (nanad) of my daughter namely kamiya, (petitioner herein) harassed my daughter when she came to her parental home at Kurukshetra and used to taunted her for not bringing sufficient dowry.*" In the FIR, complainant alleged that on 24.01.2020 his daughter called him telephonically and told that she is being beaten by her in-laws. He did not mention the names of any persons. However, in his Examination-in-Chief he improved his version and stated that his daughter on 24.01.2020 in the evening telephonically told him that the above-named accused namely Manish, Kamiya, Kailash Rani and Ashok Kumar (since deceased) were harassing her and beating her.

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13. It is true that the FIR cannot be construed as encyclopedia of prosecution's case and is not required to contain each and every minute detail of the case of the prosecution. But in the peculiar facts of the present case the omission on part of the complainant to name the petitioner as participant in the alleged incident of 24.01.2020 holds greater significance. It is pertinent that subsequent to the Examination-in-Chief of the complainant, which formed the basis for summoning the petitioner as additional accused in the case, his further Examination-in-Chief was recorded twice more by the learned trial Court on 03.12.2022 and 23.01.2023. His cross-examination was recorded on 24.05.2023, wherein he deposed as under:

"From the Hospital, I have come to the chamber of Shri S.C.Sharma and he has advised us to move the complaint. Prehlad Bhagat was accompanying me at that time. We stayed there for one hour. We reached in the chamber of Shri S.C. Sharma in between 05.00/05.15 PM. We got the complaint written from the Court premises. At that time, my entire family was accompanying me. After consulting with everybody, we got the complaint written and gave it in the police station at approximately 07.30 pm. Then we went to the Hospital. Then we deposited the dead body in the mortuary and went to our home."

14. The cross-examination of the complainant was recorded subsequent to the passing of impugned order under Section 319 by the learned trial Court, summoning the petitioner as additional accused. But this Court in the realm of evaluation of the veracity of the statement of complainant, in order to cull out the substance from his statement, to adjudge the standard of evidence to prove more than prima facie case in

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his statement, cannot be oblivious of the said subsequent statement of the complainant.

15. Thorough perusal of the testimony of PW-1 makes it clear that the FIR in question was lodged without naming the petitioner as participant in the incident of 24.01.2020, after due deliberations, in consultation with the legal expert, without any haste. The subsequent naming of the petitioner as participant in the incident of 24.01.2020, is clearly an attempt to somehow involve the petitioner as accused in the case. Except this there is no specific allegation of causing harassment by the petitioner to the deceased, in connection with demand of dowry, at any specific point of time in any particular manner. The allegations are vague and generic.

16. Moreover, the petitioner is summoned as additional accused in the offence under Section 304-B read with Section 34 of the IPC. Section 304-B of the IPC requires that in order to constitute the offence under said section, the cruelty or harassment to the deceased in connection with demand of dowry shall be soon before the death of the deceased. The evidence subject matter of the summoning of the petitioner as additional accused for offence under Section 304-B, does not meet with the standard of more than prima facie case, to establish the commission of offence by the petitioner under Section 304-B of the IPC. There is no evidence to establish the presence of the petitioner at the time and spot of incident or at sometime soon before that, who was otherwise living at her own matrimonial home with her own husband and minor children, at about 40 kms away from the place of incident.

17. Perusal of the impugned order dated 23.11.2021 passed by the learned trial Court makes it clear that though the requirement of more than prima facie case as laid down by the Hon'ble Supreme Court in Hardeep Singh's case (supra) is noted by the learned trial Court in the

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order, but the same has not been adhered to, in as much as, the learned trial Court held in the concluding para of the impugned order that a prima facie case against the petitioner is made out. The learned trial Court has erred & failed to take into account the ingredients and requirements of Section 304-B of the IPC before summoning the petitioner as additional accused to face trial, which are clearly lacking in the present case.

18. In view of the above findings the impugned order dated 23.11.2021 passed by the learned Additional Sessions, Judge, Kurukshetra in summoning the petitioner as additional accused under Section 319 of the Cr.P.C., deserves to be set aside.

Ordered accordingly.

19. Nothing said hereinabove shall be construed as opinion on merits of the trial.

(SUMEET GOEL)
JUDGE

May 06, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No