

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-939-2020 (O&M)

Date of order: 12.03.2024

Om Parkash

.....Petitioner(s)

Vs.

State of Haryana & Others

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Prashant Singh Chauhan, Advocate with
Mr. Himanshu Munjal, Advocate
Mr. Aman Yadav, Advocate
for the petitioner.

Mr. Surinder Kumar Dagar, AAG Haryana.

Nidhi Gupta, J.

Challenge in the present petition is to order dated 11.02.2020 passed by learned Additional Sessions Judge, Gurugram, whereby application filed by the petitioner under Section 319 Cr.P.C. to summon accused/respondents No.2 and 3 herein to face trial in case FIR No.250 dated 10.05.2019 registered under Sections 304-B, 498-A, 406 and 34 IPC at Police Station Sector 53, Gurugram, has been dismissed.

2. Learned counsel for the petitioner inter alia submits that petitioner is the complainant/father of the deceased. Respondent No.2 is the father-in-law and respondent No.3 is the mother-in-law of the deceased daughter of the petitioner. Daughter of the petitioner was married to son of respondents No.2 and 3 on 05.02.2018. She committed suicide on 09.05.2019 due to the harassment and torture caused to her by the accused. On the basis of statement of the petitioner, aforesaid FIR was registered.

3. Learned counsel for the petitioner submits that the petitioner had named 3 accused persons in the FIR, who are the present respondents No.2 and 3 and their son/husband of the deceased. It is stated that however, challan was issued only against husband of the deceased. Accordingly, an application was filed under section 319 CrPC, which has been dismissed by way of the impugned order.

4. Learned counsel submits that the impugned order is on the face of it incorrect as perusal of the FIR reveals that specific allegations have been made therein against respondents No.2 and 3 to the effect that they used to harass the petitioner's daughter with the demands of dowry. It is submitted that even in his testimony as PW2 dated 15.11.2019 (Annexure P2), the petitioner has categorically stated that *"On 04.05.2019, accused took my daughter at his native village Badwa, District Bhiwani where he and his parents gave beatings to my daughter to pressurize her to ask her parents or fulfilling of their demand of Rs. 30 lacs"*. It is submitted that accordingly, in view of the clear allegations made by the petitioner against respondents No.2 and 3, the impugned order could not have been passed.

5. In support, learned counsel relies upon judgment of Hon'ble Supreme Court in **"Sugreev Kumar Vs. State of Punjab & Others"** law Finder doc ID # 1397775, in particular para 12 thereof, wherein it has been held as under:-

"12. Thus, the provisions contained in Section 319 CrPC sanction the summoning of any person on the basis of any relevant evidence as available on record. However, it being a discretionary power and an extraordinary one, is to be exercised sparingly and only when cogent evidence is available. The prime facie opinion which is to be formed for exercise of

this power requires stronger evidence than mere probability of complicity of a person. The test to be applied is the one which is more than a prime facie case as examined at the time of framing charge but not of satisfaction to the extent that the evidence, if goes uncontroverted, would lead to the conviction of the accused.”

6. No other argument is made on behalf of the petitioner.
7. I have heard learned counsel for the petitioner and perused the case file in detail.
8. The complaint on the basis of which present FIR was registered states that the complaint/petitioner is resident of Rewari and working in LIC of India. He got his daughter namely Anju married to accused Vikram Singh on 05.02.2018 as per Hindu rites and ceremonies. He had spent a lot of amount on the marriage. After the marriage, accused Vikram started torturing his daughter for bringing insufficient dowry. About six months ago, Vikram demanded Rs.30,00,000/- from him to secure a Government Job and threatened to kill his daughter if his demands were not fulfilled. On 07.05.2019, his daughter Anju called him on his mobile phone and apprised him that Vikram is torturing her for dowry. His daughter was six months pregnant. On 09.05.2019, Vikram gave him a call and asked him to reach Gurgaon immediately. Accordingly, he along with his wife Maya Devi reached Kanahiya Complex, Wazirabad and found his daughter hanging from a ceiling fan with a plastic rope. He found his daughter Anju dead. His daughter Anju has died due to the torture made by Vikram with the demand of dowry. His daughter used to tell him and her mother that her father-in-law/respondent No.2 and mother- in-

law/respondent No.3 also harassed her with the demand of dowry. Due to the torture committed by accused persons, his daughter has finished her life.

9. Perusal of the above said complaint reveals that major part of the allegations are against the husband of the deceased who is currently facing trial. The only allegations made therein against respondents no. 2 and 3 is that his deceased daughter used to tell him and her mother that her father-in-law/respondent No.2 and mother-in-law/respondent No.3 also harassed her with the demand of dowry. It has been mentioned in the FIR that the deceased had told the petitioner that *"...That when I used to go to my matrimonial home at Badwa than my father in-law Kishori Lal and my mother-in-law use to harass me on account of dowry and also demands dowry..."*. Undeniably, said allegation is vague and general in nature as no specific date or instance has been mentioned in the FIR where such demand of dowry has been made by respondents No.2 and 3.

10. Moreover, learned counsel for the petitioner is unable to dispute that after the marriage of his daughter with son of respondents No.2 and 3, the deceased daughter of the petitioner had shifted with her husband to Gurugram, whereas respondents No.2 and 3 are residents of village Badwa, Tehsil Siwani, District Bhiwani. As such, the said respondents were not sharing the matrimonial home of the deceased.

11. Furthermore, as per the complaint and the FIR (Annexure P1), the petitioner has consistently stated that on 07.05.2019, his daughter had called him on his mobile number and stated that her

husband Vikram was torturing her for dowry asking her to bring Rs.30 lakh and he was not allowing her to speak to the petitioner. No such allegation has been made against respondents No.2 and 3.

12. It is only in his testimony before the learned trial Court on 15.11.2019 as PW2 that the petitioner had for the first time stated that on 04.05.2019, the accused had taken his daughter to their native village Badwa, District Bhiwani where he and his parents gave beatings to his daughter to pressurize her to ask her parents for fulfilling their demand of Rs.30 lakh. Admittedly, this had not been mentioned by the petitioner either in the complaint or in the FIR, that respondents No.2 and 3 had demanded Rs.30 lakh from the deceased. This allegation surfaced for the first time only during evidence of the petitioner on 15.11.2019. It is therefore, clear that the petitioner has sought to improve upon his case.

13. Even otherwise, in my view, said testimony of the petitioner cannot be relied upon as it has come on record that the deceased had gone with her husband to village Badwa, District Bhiwani on 04.05.2019 for applying for LIC exam. Furthermore, after presentation of the challan, no new material or fresh evidence was placed on record to merit the summoning of the said respondents No.2 and 3.

14. Even as per the judgment relied upon by counsel for the petitioner in case of **Sugreev Kumar (supra)**, it has been held that a prima facie case has to be made out to justify summoning under section 319 Cr.P.C. In the facts and circumstances of the case as noticed here in above, I find that the said parameter is not met.

15. In this regard, reference may 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:

“xxxx 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 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”

16. 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 the present case, I find no grounds are made out that warrant the exercise of such power.

17. Learned counsel for the applicant is unable to dispute the above, said, factual and legal position. Accordingly, I find no merit in the present petition and the same is hereby **dismissed**.

18. Pending application(s) if any also stand(s) disposed of.

12.03.2024
Sunena

(Nidhi Gupta)
Judge

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