

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

132

Date of order: 06.02.2024

CRM-M-17817-2023 (O&M)

Mandeep Kaur

.....Petitioner(s)

Vs.

State of Punjab & Others

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. J.S. Moudgill, Advocate
for the petitioner.

Mr. Kunwarbir Singh, AAG Punjab.

Nidhi Gupta, J.

Present petition under Section 482 Cr.P.C. is filed by the wife seeking modification of summoning order dated 22.04.2022 (Annexure P2) passed by learned Judicial Magistrate, 1st Class, Patiala; and quashing of order dated 10.11.2022 (Annexure P4) passed by learned Additional Sessions Judge, Patiala whereby Revision Petition filed by the petitioner for summoning respondents No.2 to 4 herein, in case FIR No.76 dated 18.09.2019 under Sections 406 and 498-A IPC registered at Police Station Women, District Patiala, has been dismissed.

2. Brief facts of the case are that respondent No.2 is the maternal uncle/mama of the husband of the petitioner; respondent No.3 is the wife of respondent No.2; and respondent No.4 is the minor brother-in-law/devar of the petitioner. Petitioner had got registered the above said FIR (Annexure P1) against her husband, mother-in-law, and the present

respondents No.2 to 4. However, after inquiry, the police had exonerated the said respondents No.2 to 4 herein. Thereafter, the petitioner had filed an application under Section 319 Cr.P.C. for summoning the said respondents No.2 to 4 as well as Gurpreet Kaur, her mother-in-law, as accused to face trial in the above said case. However, vide order dated 22.04.2022 (Annexure P2), only mother-in-law namely Gurpreet Kaur was ordered to be summoned as accused to face trial whereas the petitioner's application under Section 319 Cr.P.C. was dismissed qua respondents No.2 to 4 herein. Against the said order dated 22.04.2022, the petitioner filed revision petition (Annexure P3), which was also dismissed by learned Revisional Court vide order dated 10.11.2022 (Annexure P4). Hence, present revision petition.

3. Learned counsel for the petitioner-complainant submits that perusal of the FIR (Annexure P1) reveals that specific allegations have been made therein against respondents No.2 to 4 herein. However, despite that they have not been summoned to face trial as accused. It is stated that bona fide of the petitioner is evident from the fact that she has not leveled any allegations against her sister-in-law/nanad namely Sharanpreet Kaur, which shows that it is not the intent of the petitioner to unnecessarily involve all family members of her in-laws. But the facts on record reveal that respondents No.2 to 4 had actively participated in the crime of demanding dowry from the petitioner and had caused her great harassment; and hence, the impugned orders deserve to be set aside.

4. No other argument is raised on behalf of the petitioner. I have heard learned counsel for the petitioner.

5. Perusal of the record of the case shows that the petitioner was married to nephew of respondent No.2 namely Gursharan Singh son of Avtar Singh on 25.02.2018. No child was born out of this wedlock. As per the petitioner, she was turned out of the matrimonial home on 15.11.2018. Present FIR was registered on 18.9.2019.

6. Perusal of the FIR reveals that though serious allegations have been levelled by the petitioner against her husband, including the allegation that in June 2018, he had forcibly given her medicine for terminating her pregnancy, however, against respondents No.2 to 4 herein, only general, unspecified and routine allegations have been made to the effect that they made demands of dowry from the petitioner and her family, or that they used to instigate the husband and mother-in-law of the petitioner.

7. Moreover, admittedly, respondents No.2 to 3 lived separately and did not reside in the matrimonial home of the petitioner. The said fact is not denied by counsel for the petitioner. Respondent No.4 is admittedly 15-year-old school-going younger brother-in-law of the petitioner. Even there is no allegation of entrustment of any dowry article to respondents No.2 to 4. It was in these circumstances that upon investigation challan was filed only against husband of the petitioner. Furthermore, after presentation of the challan, no new material or fresh evidence was placed on record by the petitioner to merit the summoning of the said respondents No.2 to 4. Further, in the FIR, allegations for forcibly giving medicines to petitioner for terminating her pregnancy, have been made only against the husband, however, in the application under Section

319 Cr.P.C. name of mother-in-law of the petitioner has also been added; and names of respondents No.2 to 4 herein were not added. Thus, after detailed perusal of the facts on record, in my view, impugned orders dated 22.04.2022 and 10.11.2022 correctly indicate that the petitioner was unable to prove prima facie case against respondents No.2 to 4 herein.

8. In the facts and circumstances of the present case, reference may also be made to judgment of the Hon'ble Supreme Court in the case titled as **Sarabjit Singh v State of Punjab, (2009) 16 SCC 46**: wherein it has been held that:

“xxxx 21. 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”

9. 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.

10. In view of the above, I find no infirmity in the orders dated 22.04.2022 (Annexure P2) passed by learned Judicial Magistrate, 1st Class, Patiala; and 10.11.2022 (Annexure P4) passed by learned Additional Sessions Judge, Patiala. Present petition accordingly stands **dismissed**.
11. Pending application(s) if any also stand(s) disposed of.

06.02.2024
Sunena

(Nidhi Gupta)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No