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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-18866-2023 (O&M)
Date of decision: 24.07.2024

Rozy

... Petitioner

Versus

Jitesh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ishnoor Singh Bains, Advocate
for the petitioner.

Ms. Prarthana Duggal, Advocate for
Mr. Namit Khurana, Advocate
for respondents No.1 & 2.

Mr. Vikas Bhardwaj, AAG, Haryana
for respondent No.3.

HARPREET SINGH BRAR, J. (ORAL)

1. Present revision petition has been preferred against impugned order dated 06.02.2023 passed by learned Sessions Judge, Karnal and order dated 04.08.2018 passed by learned trial Court, vide which the application filed by the petitioner for summoning of respondent No.2 as additional accused to face trial in CHI No.2197 of 2015, in FIR No.225 dated 01.09.2015 under Sections 323,



406, 498-A of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station Kunjpura, District Karnal, was dismissed.

2. Learned counsel for the petitioner, *inter alia*, contends that the complainant, who appeared as PW1, has attributed specific role to respondent No.2. She filed an application under Section 319 Cr.P.C. seeking summoning of respondent No.2 as additional accused and vide order dated 04.08.2018, the same was dismissed by learned Judicial Magistrate 1st Class, Karnal. Thereafter, the petitioner-complainant filed a revision petition before learned Sessions Judge, Karnal for setting aside the order dated 04.08.2018, which was also dismissed by ignoring the law laid down by the Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab, (2014) 3 SCC 92*** and ***Sugreev Kumar Vs. State of Punjab and others, 2019 (@) Law Herald (SC) 1047***.

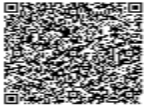
3. Learned counsel for respondents No.1 & 2 submits that learned trial Court has passed a well-reasoned order based on correct appreciation of evidence available on record, which has been upheld by learned lower appellant Court and as such, present petition is liable to be dismissed.

4. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that name of proposed accused i.e. respondent No.2 did not find mention in the complaint/statement under Section 161 Cr.P.C. and during the investigation, the investigating agency found that no case was made out against her, as she never participated in the alleged offence, therefore, her name was removed from the case and did not file challan against her. Only



generic allegations have been levelled against respondent No.2 and perusal of the statement of the petitioner-complainant Ex.PW1/C indicates that she never made specific allegations regarding demand of dowry against respondent No.2. Material inconsistencies were observed in the narration in the prosecution case, which does not inspire confidence. Moreover, the improvements made, while deposing before learned trial Court cannot form the basis for exercising the extraordinary power under Section 319 Cr.P.C. Mere statement of the complainant, which is not substantiated by any credible material, cannot be a ground to invoke the discretionary and extraordinary power of this Court to summon an additional accused under Section 319 Cr.P.C. In the absence of any material suggesting existence of more than *prima facie* case available during the course of trial of an offence, the Courts ought to refrain themselves from exercising its discretionary and extraordinary power under Section 319 Cr.P.C. The Constitution Bench of the Hon'ble Supreme Court in ***Hardeep Singh***'s case (*supra*) has held that the power under Section 319 Cr.P.C is a discretionary and extraordinary power. It is to be exercised only on the basis of the material available before the Court during the trial and not because the Magistrate or the Sessions Judge is of the opinion that some other accused/person may also be guilty of committing that offence.

5. In the absence of any credible material, the power under Section 319 Cr.P.C. ought not to be invoked. A two Judge Bench of the Hon'ble Supreme Court in ***Juhru and others Vs. Karim and another, (2023) 5 SCC 406*** speaking



through Justice Surya Kant, while relying upon *Hardeep Singh*'s case (*supra*) has held as under:-

“16. It is, thus, manifested from a conjoint reading of the cited decision that power of summoning under Section 319 CrPC is not to be exercised routinely and the existence of more than prima facie case is sine qua non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 CrPC, and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 CrPC ought not to be invoked.

6. In view of the aforesaid facts and circumstances of the case at hand, this Court does not find any merit in the arguments raised by learned counsel for the petitioner. Consequently, the impugned order dated 06.02.2023 passed by learned Sessions Judge, Karnal, upholding the order dated 04.08.2018, dismissing the application under Section 319 Cr.P.C., is upheld and the revision petition stands dismissed.

[HARPREET SINGH BRAR]
JUDGE

24.07.2024
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No