



**260 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-33712-2015
Date of decision: 20.08.2024

Gurpreet SinghPetitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. V.K. Sandhir, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG Punjab

HARPREET SINGH BRAR, J.

CRM-M-33712-2015

1. The aforementioned petition has been preferred under Section 482 Cr.P.C. for setting aside of the impugned order dated 19.12.2014 (Annexure P-5) passed by learned Additional Sessions Judge, Amritsar vide which the petitioner has been summoned to face trial as additional accused under Section 319 of Cr.P.C. in the case arising out of FIR No. 29 dated 25.02.2012 registered under Sections 498-A and 496 of IPC at Police Station Chheharata, Amritsar.

2. Brief facts of the case are that the FIR (supra) was registered upon a written complaint made by Bua Singh, wherein, it was alleged that the marriage of his daughter was solemnized with one Jagjit Singh, who is the brother-in-law of the petitioner, with pomp and splendor. Ample dowry articles were given to Jagjit Singh and other members of his family. However, soon after marriage, the daughter of complainant was subjected to maltreatment on account of dowry harassment and physical assault.



3. In consequence of the FIR (supra), investigation was conducted by the police. Resultantly, final report under Section 173 Cr.P.C. was presented against Jagjit Singh (husband), Jasbir Singh (father-in-law) and Amarjit Kaur (mother-in-law). As regards the present petitioner, the police neither cited him as an accused in the final report nor placed him in Column No.2 and thereby, he was not charge-sheeted.

4. Charges against co-accused Jagjit Singh, Jasbir Singh and Amarjit Kaur were framed by the learned trial Court. During the course of trial, the complainant was examined as PW-1. Thereafter, an application under Section 319 Cr.P.C. was moved for summoning the petitioner, namely, Gurpreet Singh, as additional accused. The learned trial Court dismissed the said application vide order dated 19.05.2014. Consequently, the complainant filed a revision against the said order, which was allowed vide impugned order dated 19.12.2014 and the petitioner was summoned as additional accused for commission of offence punishable under Sections 498-A and 406 of IPC.

5. Aggrieved by the abovesaid order, the petitioner has approached this Court by way of the petition under Section 482 Cr.P.C.

CONTENTIONS

6. Learned counsel appearing for the petitioner inter *alia* contends that the learned revisional Court has summoned the petitioner in a mechanical manner by passing a non-speaking order. Further, no overt act has been attributed to the petitioner as is clear from a bare perusal of the FIR (supra) as well as the deposition of the complainant. Moreover, the complainant did not stand the test of cross-examination before the petitioner was summoned as an additional accused. He further avers that the allegations levelled against the petitioner lack specificity as no time, date and place when the alleged cruelty



was meted out by the petitioner, is mentioned in the FIR (supra) or statement of the complainant PW1. The petitioner has been residing in Delhi since 2011 and has no say in the matrimonial life of his brother and his wife. He further submits that no new evidence came up before the learned trial Court on account of which the petitioner could be summoned as an additional accused since summoning of an additional accused is a serious matter and requires more than prima facie evidence. He has placed reliance upon the judgments rendered in the cases of *Pepsi Food Ltd. and another vs. Special Judicial Magistrate and others* (1998) 5 SCC 749; *Michael Machadeo and another vs. CBI and another* 2000(2) R.C.R. (Crl.) 75; *Mohd. Shafi vs. Mohd. Rafiq* 2007(2) R.C.R. (Crl.) 762; *Sarabjit Singh vs. State of Punjab*, 2009(3) R.C.R.(Crl.) 388 and *Lal Suraj @ Suraj Singh vs. State of Jharkhand*, 2009(1) R.C.R. (Crl.) 504.

7. *Per contra*, learned State counsel submits that the petitioner has been specifically named in the FIR (supra) and his name and actions are duly given in the evidence on record which duly establishes his guilt. It is further submitted that the impugned order has been passed in accordance with law and due appreciation of the entire evidence on record and thus, no interference is warranted by this Court.

OBSERVATIONS & ANALYSIS

8. I have heard the learned counsel for the parties and after perusing the material available on record, it transpires that the petitioner was summoned as an additional accused merely because he was named by the complainant during the latter's examination-in-chief. No cogent evidence has been brought on record to justify the summoning of the petitioner. Mere vague and omnibus allegations do not breach the threshold as is necessary to summon the petitioner



as an additional accused. Initially, after the necessary investigation, the concerned police presented the final report under Section 173 Cr.P.C. only against the husband, the father-in-law, and the mother-in-law whereas, the petitioner was duly held to be innocent. Therefore, this Court is inclined to observe that there is lack of cogent material available on record which can establish more than prima facie case against the petitioner.

9. It is pertinent to discuss the perspicuous observations made by the Hon'ble Supreme Court in some of its recent judgements. Discussing the scope of Section 319 Cr.P.C., the Constitution Bench of Hon'ble Supreme Court in case titled ***Hardeep Singh Vs. State of Punjab, SC 2014(1) RCR (Criminal) 623*** has laid down that:

"105. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. 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 unrebutted, 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 Cr.P.C. to form any opinion as to the guilt of the accused."

10. Subsequently, Hon'ble Supreme Court in the case of **Sagar Vs. State of Uttar Pradesh and another Criminal Appeal No. 397 of 2022 (Arising out of SLP(Crl) No.7373 of 2021)**, referring to **Hardeep Singh (supra)** made the following observations:

"The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above 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 unrebutted, would lead to conviction."

11. Recently Hon'ble Supreme Court in case of **Juhru & Ors. Versus Karim & Anr. 2023 AIR (Supreme Court) 1160** observing the scope of section 319 Cr.P.C held that:

"It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a prima-facie case is sine quo 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 Cr.P.C., 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 is, 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 Cr.P.C. ought not to be invoked.”

CONCLUSION

12. In view of the discussion made hereinabove, the instant petition preferred under Section 482 Cr.P.C is allowed in the following terms: -

- i. The impugned order dated 19.12.2014 passed by learned Additional Sessions Judge, Amritsar, is hereby, set aside.
- ii. Nothing observed herein shall be construed as a comment on the merits of the case at hand, thereby, causing prejudice to the case of the prosecution.

13. Pending CRM(s), if any, are also disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

20.08.2024

Neha

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