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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2345-2017 (O&M)

Reserved On: 01.08.2024

Date of pronouncement: 07.08.2024

RAKESH KUMAR AND ANR.

...Petitioners

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Abhijit Partap Singh Chaudhary, Advocate
for the petitioners

Ms. Geeta Sharma, D.A.G., Haryana

Mr. Ankur Lal, Advocate for
respondent no.2.

HARPREET SINGH BRAR, J.

1. The present revision petition has been filed against the impugned order dated 05.06.2017 passed by learned Additional Sessions Judge, Kurukshetra vide which the application filed by the prosecution under Section 319 Cr.P.C. for summoning the petitioners as additional accused in the case arising out of FIR No. 130 dated 31.03.2016 under Sections 304-B/34 of IPC at Police Station- Pehowa, Kurukshetra, has been allowed.

2. The facts, in brief, are that respondent no.2-complainant is the brother of the deceased victim. He had moved a complaint which later culminated into the FIR (supra), wherein, it was alleged that his sister was married to Mukesh Kumar (brother of petitioner no.1 and son of petitioner no.2) on 05.12.2014. Various dowry articles were given to the accused at the time of marriage but out of greed, they started harassing his sister for not

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bringing sufficient dowry. In order to settle their daughter, parents of the victim gave Rs.2 Lacs to the present petitioners in presence of the accused-husband. After 2 months, the petitioners again started demanding dowry from the victim. While the victim was working in the Education Department in 2012, the accused husband used to beat her and snatch her salary. After the victim gave birth to a female child on 18.11.2015, the petitioners refused to take her back into the matrimonial home unless they were paid Rs.5 lacs by her parents. On 30.03.2016, accused-husband called the victim to her matrimonial home and when she returned to her parental house later in the day, she seemed unwell and started vomiting. She was taken to a hospital by respondent no.2 but was declared dead on arrival.

3. Upon completion of investigation, police report was presented only against accused-husband and subsequently, he was summoned to face trial. Aggrieved, the prosecution moved an application under Section 319 Cr.P.C. for summoning the petitioners as additional accused and the same was allowed vide order under challenge in the present petition.

4. Prosecution, after examining the complainant Karan Singh as PW1, filed an application under Section 319 Cr.P.C to summon the present petitioners as additional accused in the case stating that specific roles have been assigned to them in the commission of the said offence. The learned trial Court allowed the said application and consequently, the petitioners were summoned to face trial along with other accused. Aggrieved by the same, the petitioners have approached this Court by way of the present petition.

5. Learned counsel for the petitioners *inter alia* contended that during investigation, both the petitioners were found innocent. Even the

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complainant-respondent no.2 had admitted in his cross-examination that the petitioners were found innocent by three investigation officers. Upon completion of the investigation, only husband of the deceased was challaned. It was further argued that the deceased did not leave behind a suicide note. The girl child born out of the wedlock is also being raised by the family of the husband. It was further contended that since it was the second marriage of the deceased as well her husband, the same was conducted in a simple manner. He further argued that it was found during the investigation that petitioner no.1 had been living in a separate portion of the house with separate gas connection. Petitioner no.2 is an old aged lady who has been bed-ridden since 2008. It was also argued that despite the apparent contradictions in the statement of the complainant, the petitioners were still summoned as additional accused. Further, the deceased took her last breath while she was at her parental home for the past 5 months from the date of the incident. Prior to this incident, no complaint alleging harassment or dowry demand was ever moved by the deceased or the complainant.

6. Learned State counsel submits that the impugned order (supra) has been passed in accordance with the law and does not warrant any interference by this Court

7. The learned counsel for respondent no.2-complainant (brother of the deceased) submitted that during his evidence, the complainant levelled categorical allegations against the petitioners regarding harassment for dowry and further corroborated the claim made by him in the present FIR. He further contended that in presence of specific and direct evidence against the petitioners, they have been rightly summoned by the learned trial Court under



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8. Before proceeding further, 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 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



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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."

9. Hon'ble Supreme Court in **Brijendra Singh and Others Vs. State of Rajasthan, (2017) 7 SCC 706**, while summing up the ratio as laid down in **Hardeep Singh's case (supra)** has held as under:

"Power under Section 319 Cr.P.C. can be exercised by the trial Court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial Court finds that there is some 'evidence' against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The 'evidence' herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect - of whom charge-sheet



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was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima-facie opinion which is to be formed requires stronger evidence than mere probability of his complicity."

10. Hon'ble Supreme Court later in 2019 relying on **Hardeep Singh (supra)** held in **Periyasami and Others Vs. S.Nallasamy (2019) SCC Online SC 379** that:

"The additional accused cannot be summoned under Section 319 of the Code in casual and cavalier manner in the absence of strong and cogent evidence. Under Section 319 of the Code additional accused can be summoned only if there is more than prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of conclusion of the trial convicting the accused."

11. Again 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)** laid down that:

"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



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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."

12. 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."

13. Having heard the learned counsel for the parties and after perusing the record, it transpires that the contents of the complaint which formed the basis of the FIR (supra) and the statement made by the complainant under Section 161 Cr.P.C. have been duly corroborated by the complainant during his



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examination-in-chief. There are material allegations against the petitioners since inception of the complaint which are in tandem with the allegations levelled against the main accused-husband who has been challaned. Although, the petitioners were declared innocent during the investigation, but the final report dated 23.06.2016 has failed to disclose anything about the material which led to their exoneration. Further, there is no evidence on record at this stage to suggest that petitioner no.1 was separate in mess. In light of the aforementioned facts, more than prima facie case is made out for summoning the petitioners as additional accused under Section 319 Cr.P.C. Therefore, the order under challenge was passed in consonance with the observation made by Constitution Bench of Hon'ble Supreme Court in 'Hardeep Singh Vs. State of Punjab' (Supra).

14. In view of the above discussion, it is held that the impugned order dated 05.06.2017 has been passed in conformity with the binding judicial dictums and therefore, no ground is made out for setting aside the same.

15. Hence, the present petition is dismissed with liberty granted to the petitioners to raise all the appropriate pleas before the learned trial Court. Further, in view of the ratio of law laid down by this Court in *Suresh Kumar and another Vs. The State of Haryana and another 2023 (2) Law Herald 1498*, the personal appearance of the petitioners before the learned trial Court is ordered to be exempted, subject to the following conditions:-

- (i) petitioner shall be represented through her counsel;
- (ii) shall not delay/stall the proceedings;
- (iii) shall not dispute their identity;
- (iv) shall have no objection if the prosecution evidence is recorded in their absence but in the presence of their counsel;
- (v) shall appear before the Court as and when required; and

(vi) any other condition, which the Court below may impose.

16. Pending miscellaneous applications, if any, shall be disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

07.08.2024
Ajay Goswami

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