



CRR-2382-2018

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

CRR-2382-2018

Decided on: 01.10.2024

Paramjit Kaur @ Baby

..... Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ravi Mahotra, Advocate, for the petitioner.

Mr. Karunesh Kaushal, AAG, Punjab.

Mr. J.S. Ghuman, Advocate, for respondent No.2.

Rajesh Bhardwaj, J.

1. The petitioner has approached this Court impugning the order dated 09.05.2018 passed by learned Additional Sessions Judge, Jalandhar, whereby, order dated 13.11.2017 passed by learned JMIC, Jalandhar was set aside and trial Court was directed to pass a fresh order on the application filed under Section 319 Cr.P.C.

2. Succinctly facts of the case are that respondent No.2 lodged an FIR with the Police on the allegations that he retired from Army and wanted his son Parminder Singh to be settled, who had passed 10+2. Lakhvir Singh @ Lakha was married in their village, hence, he was acquainted with him. Lakhvir Singh @ Lakha took his son Parminder Singh in confidence by alluring him to be appointed in Merchant Navy. On 16.06.2011, Lakhvir Singh @ Lakha and his wife Paramjit Kaur @ Baby came to his house and took Rs.3 lacs advance on the pretext of appointing his son in Merchant Navy. In all, he paid Rs.7,80,000/- to them. However, neither his son was appointed in Merchant Navy nor any money was returned to him. Thus,



request was made to take legal action against both the accused. On completion of investigation, the Police found the allegations against the petitioner Paramjit Kaur @ Baby having been not substantiated and thus, filed the challan only against her husband Lakhvir Singh @ Lakha. On the framing of charges against co-accused Lakhvir Singh @ Lakha, trial commenced. During the trial the prosecution filed an application under Section 319 Cr.P.C. for summoning petitioner Paramjit Singh @ Baby to face the trial alongwith co-accused. On hearing, the trial Court found no merit in the application and thus, dismissed the same vide order dated 13.11.2017. Aggrieved by the same, respondent No.2 filed a revision petition before learned Additional Sessions Judge, Jalandhar, who after hearing both the sides, found the order passed by the trial Court to be unsustainable and thus, set aside the same with direction to the trial Court to pass a fresh order on the application filed under Section 319 Cr.P.C., vide impugned order dated 09.05.2018. Hence, aggrieved by the same, the petitioner is before this Court by way of filing the present revision petition.

3. Learned counsel for the petitioner has vehemently submitted that the allegations made by respondent No.2-complainant are totally motivated and general in nature. It is submitted that the prosecution examined three witnesses i.e. complainant -Amrik Singh as PW-1, Pawandeep Kaur daughter of complainant as PW-2 and Kashmir Kaur wife of complainant as PW-3. It is submitted that during the investigation, the allegations made in the FIR against the petitioner could not be substantiated and thus, the petitioner was found innocent by the Investigating Agency. He



submits that the prosecution filed an application under Section 319 Cr.P.C. for summoning the petitioner, however, the same being without any merit was dismissed by the trial Court. He submits that however, learned revision Court has fallen in error in setting aside the well reasoned order passed by learned trial Court. He submits that as per the settled proposition of law, summoning under Section 319 Cr.P.C. cannot be in a casual or cavalier manner. He has submitted that the statutory power under Section 319 Cr.P.C. is an extraordinary power, which is there to prevent the miscarriage of justice, however, learned revisional Court has failed to appreciate the same and also the law settled by Hon'ble Supreme Court in case of **Hardeep Singh vs. State of Punjab and others, (2014) 3 SCC 92** and thus, passed the impugned order, which is unsustainable in the eyes of law and deserves to be set aside.

4. Learned counsel for respondent No.2 has opposed the submissions made by counsel for the petitioner. He has submitted that respondent No.2 has made specific allegations against the petitioner and her husband. Both of them had allured the son of respondent No.2 for providing him job in Merchant Navy. It is submitted that the Investigating Agency has carried out a tainted investigation in declaring the petitioner innocent. He submits that during the trial, three witnesses have been examined i.e. respondent No.2- complainant-Amrik Singh as PW-1, Pawandeep Kaur daughter of complainant-respondent No.2 as PW-2 and Kashmir Kaur wife of complainant-respondent No.2 as PW-3, who duly supported the case of the prosecution. While relying on the law settled by Hon'ble Supreme Court



in **Rajesh and others vs. State of Haryana, 2019(3) RCR (Criminal) 133.**

He submits that learned trial Court has illegally declined the application filed by the prosecution vide order dated 13.11.2017, however, learned revisional Court has rightly appreciated the facts and circumstances on the anvil of the law settled and thus, set aside the same by remanding the case to the trial Court. It is submitted that there being no infirmity in the impugned order, the present petition being devoid of any merit, deserves to be dismissed.

5. Heard.

6. After hearing learned counsel for the parties and perusing the record, it is apparent that respondent No.2 lodged an FIR against the petitioner and her husband. During the investigation, the allegations against the petitioner were not substantiated and hence, she was kept in column No.2. During the trial, an application under Section 319 Cr.P.C. was filed by the prosecution, however, learned trial Court found the same to be without merit and dismissed the same. Thereafter, it is the revisional Court, who remanded the case to the trial Court to pass a fresh order on the application under Section 319 Cr.P.C. Though the petitioner has been named in the FIR, who has been alleged to have visited the house of the complainant alongwith her husband, however, perusal of the statements of the PW-1, PW-2 and PW-3, would show that the petitioner is not named in their statements. There is no quarrel to the preposition of law propounded by Hon'ble Supreme Court in **Rajesh's** case (supra), but every case has its own facts. As stated earlier in the present case, the witnesses examined by the complainant have not uttered anything against the present petitioner and as



such the case relied upon by counsel for respondent No.2 does not come to support his case.

7. To understand the controversy in hand, statutory provisions of Section 319 Cr.P.C. is necessary to be considered, which is reproduced as under:-

“Section 319. Power to proceed against other persons appearing to be guilty of offence- (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under subsection (1), then-

(a) the proceedings in respect of such person shall be commenced a fresh, and the witnesses re- heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

8. The Constitutional Bench of Hon'ble Supreme Court in **Hardeep Singh's** case (supra) has held that power under Section 319 Cr.P.C. is discretionary and an extra ordinary power, which is to be exercised sparingly and in those cases where the circumstances so warrant.



It should be exercised only where strong and cogent evidence occurs against a person and such power should not be exercised in a casual and cavalier manner. It has been further held that there is no scope by the Court under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused.

9. Hon'ble Supreme Court has held that the Court should refrain itself from exercising its power under Section 319 Cr.P.C. in a mechanical manner. It has been held that power under Section 319 Cr.P.C. should be used sparingly in exceptional circumstances.

10. Weighing the facts and circumstances of the present case on the anvil of law settled by the Hon'ble Supreme Court, the present petition is allowed and the impugned order dated 09.05.2018 passed by learned Additional Sessions Judge, Jalandhar is set aside and the order dated 13.11.2017 passed by leaned JMIC, Jalandhar is upheld.

01.10.2024
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No

(RAJESH BHARDWAJ)
JUDGE