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

CRR-1689-2024

Reserved on: 20.09.2024

Pronounced on: 25.09.2024

Saroj

....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**Present:** Mr. R.S. Mamli, Advocate
for the petitioners.

Ms. Geeta Sharma, DAG, Haryana

HARPREET SINGH BRAR, J.

1. The instant revision petition has been preferred against the impugned order dated 15.07.2024 passed by learned Additional Sessions Judge, Karnal vide which the application moved by the petitioner/complainant under Section 319 Cr.P.C. *qua* summoning of respondents No.3 to 6 as additional accused, has been dismissed.

2. Succinctly, facts as of the case as alleged are that on 22.11.2022 the petitioner moved an application before the concerned police wherein it was alleged that her daughter solemnized marriage with Ravi (respondent no.2) in the year 2017. Soon after marriage, the accused husband along with respondent no.3 to 6 (in-laws) started harassing her daughter. Panchayat was convened numerous times but the accused persons failed to amend their ways. It was also alleged that on 22.11.2022, the accused persons in, in connivance with each other, caught hold of the daughter of the petitioner and respondent no.5 (sister-in-law/*nanad*) forcibly put poison in her mouth. When the petitioner made a



phone call to their house, she was informed about the deteriorating condition of her daughter. Accused Ravi told her on the phone that they had administered poison to her daughter. It was also alleged by the petitioner that respondent no.3 (father-in-law) used to persuade her daughter to have sexual relations with him but she was beaten upon refusal. Consequently, FIR No.333 dated 22.11.2022 was registered under Sections 304-B, 328, 34, 354, 498-A, 506 and 511 of IPC at Police Station- Munak, Karnal. Initially, police report was submitted before the learned trial Court only against respondent no.2 (husband) as the investigation qua the private respondents was pending. Subsequently, supplementary report under Section 173(8) Cr.P.C. was submitted wherein, respondents No.3 to 6 were found innocent.

3. Trial ensued against the accused husband and the petitioner deposed before the learned trial Court as PW-1. Thereafter, an application under Section 319 Cr.P.C. was moved by the petitioner before the learned trial Court for summoning respondents No.3 to 6 as additional accused to face trial along with the accused-husband. However, the aforesaid application was dismissed by the learned trial Court vide the impugned order. Aggrieved, the petitioner has approached this Court by way of the present petition.

4. Learned counsel appearing for the petitioner inter vociferously contends that all the accused have been categorically named in the application moved by the petitioner which culminated into FIR (supra) and specific role has been attributed to them. Further, the petitioner has reiterated the specific role of the accused in her testimony before the Court as PW-1. He further argues that medical report (Annexure P-1) duly substantiate the claim of the petitioner. It is also contended that the police has exonerated respondents no.3 to 6 without taking on record any statement from the Panchayat members. Even



the affidavits of the persons whose statement was recorded by the police have not been taken on record by the police. Further, the role of respondents no.3 to 6 has been specifically mentioned in the disclosure statement of the accused husband. Therefore, sufficient material is available on record to establish more than prima facie case against them.

5. Learned state counsel submits that the complainant has categorically deposed in her examination-in-chief regarding involvement and complicity of respondents no.3 to 6, thereby, duly corroborating the allegations levelled by her in her complaint. She further submits that more than prima facie case is made out in order to summon them as additional accused.

6. I have heard the learned counsel for the parties and perused the material available on record. It transpires that in her testimony before the learned trial Court as PW-1, it has been deposed by the petitioner that her daughter informed her about the complicity and role of the accused persons when she reached the hospital to meet her daughter. However, the aforesaid fact finds no mention in the application (Ex.P1) moved by the petitioner which resulted in the FIR (supra). Moreover, the attending doctor had declared the victim unfit to make any statement on account of application moved by ASI Ram Niwas on 22.11.2022, thereby, vitiating the aforesaid claim of the petitioner. In addition, it has been categorically mentioned in the police report filed under Section 173(8) Cr.P.C. that complainant failed to produce any evidence to support her contentions. In the statements recorded by the police during investigation, no material came forward which could implicate respondents no. 3 to 6 in the present case.

7. At this juncture, it is important to discuss the scope of Section 319 Cr.P.C. A Constitution Bench of Hon'ble Supreme Court in case titled **Hardeep**



Singh Vs. State of Punjab, SC 2014(1) RCR (Criminal) 623 has delved into the ambit of Section 319 Cr.P.C. and has held as under:

"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 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.”

8. 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)**, while referring to **Hardeep Singh (supra)** observed as follows:

"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."

9. Recently Hon'ble Supreme Court in case of **Juhru & Ors. Versus Karim & Anr. 2023 AIR (Supreme Court) 1160** elaborated upon the scope of section 319 Cr.P.C and made the following observations:

“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.”

10. It is trite law that mere statement of the complainant, which is unsubstantiated 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. Such discretion must be exercised judicially having regard to the facts and circumstances of the case. 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.

11. Taking into consideration facts and circumstances of the case at hand, especially the fact that the petitioner has tried to improve her version in order to implicate respondents no.3 to 6, this Court is of the opinion that case of the prosecution does not satisfy the test of more than prima facie case qua the present petitioners as enunciated in **Hardeep Singh's case (supra)**.

12. Accordingly, the instant revision petition is dismissed being bereft of any merit.

(HARPREET SINGH BRAR)
JUDGE

25.09.2024
Neha

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