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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1981-2024 (O&M)
Date of Decision: 14.10.2024

Charanjit Kaur

... Petitioner

Versus

State of Punjab and another

... Respondents

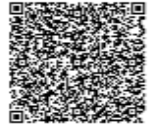
CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Navinder Jit Singh Dandiwal, Advocate
for the petitioner.

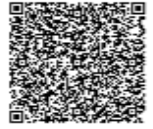
Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against impugned order dated 23.08.2024 passed by learned Judicial Magistrate 1st Class, Moga, vide which the application filed by the petitioner-complainant through APP for the State seeking summoning of respondent No.2 as an additional accused under Section 319 Cr.P.C. to face the trial in FIR No.166 dated 15.10.2015 under Sections 420, 376, 506, 120-B of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station City Moga, has been dismissed.



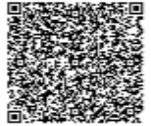
2. Learned counsel for the petitioner, *inter alia*, contends that the petitioner has levelled specific allegations in the FIR against respondent No.2, who is her mother-in-law. Thereafter, statement of the petitioner under Section 161 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [now Section 180 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')] was recorded and she reiterated her allegations against respondent No.2. Further, during her statement recorded by the jurisdictional Magistrate under Section 164 of Cr.P.C. (now Section 183 of BNSS), she levelled specific allegations against respondent No.2 and as such, learned trial Court ought to have summoned respondent No.2 as an additional accused to face the trial, by exercising the power under Section 319 of Cr.P.C. (now Section 358 of BNSS). It is further contended that in spite of the specific allegations against respondent No.2, learned trial Court ignored the evidence available on record and misread the statements of the petitioner. The petitioner has specifically stated that respondent No.2 pressurized her to transfer the property inherited by her from her first husband should be transferred in the name of son of respondent No.2. Learned trial Court has dismissed the application filed by the petitioner under Section 319 of Cr.P.C. (now Section 358 of BNSS) through learned Public Prosecutor, for summoning respondent No.2 as additional accused by means of a non-speaking order and by erroneously 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. *Per contra*, learned State counsel submits that veracity of the allegations have been thoroughly examined and the allegations qua complicity of respondent No.2 have been found false. In the statement of the petitioner recorded under Section 164 of Cr.P.C. (*now Section 183 of BNSS*) (Annexure P-3), no specific allegation has been levelled against respondent No.2.

4. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the allegations made by the petitioner against respondent No.2 completely lack specificity. No date and time has been mentioned with regard to allegations against respondent No.2. Further, perusal of the statements made by the petitioner indicates that there is no allegation with regard to any harassment caused to the petitioner on account of demand of dowry. 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. (*now Section 358 of BNSS*). 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 of Cr.P.C. (*now Section 358 of*

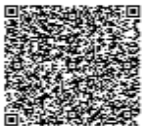


BNSS). In the absence of any material suggesting existence of more than *prima facie* case available during the course of trial of an offence, the Courts ought to refrain themselves from exercising its discretionary and extraordinary power under Section 319 Cr.P.C. (*now Section 358 of BNSS*). The Constitution Bench of the Hon'ble Supreme Court in **Hardeep Singh's** case (*supra*) has held that the power under Section 319 Cr.P.C. (*now Section 358 of BNSS*) 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. (*now Section 358 of BNSS*) 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

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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, this Court does not find any merit in the arguments raised by learned counsel for the petitioner. Consequently, the impugned order dated 23.08.2024 passed by learned Judicial Magistrate 1st Class, Moga is hereby upheld. Accordingly, the present revision petition is dismissed being bereft of any merit.

[HARPREET SINGH BRAR]
JUDGE

14.10.2024
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No