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

CRR-2751-2022 (O&M)

Date of decision: 17.07.2024

Jagwant Singh and others

....Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Pradeep Virk, Advocate
For the petitioner.

Mr. Sandeep Kumar, DAG, Punjab

Mr. Naveen Bawa, Advocate
For respondent no.2

HARPREET SINGH BRAR, J.

1. The instant revision petition has been preferred against the impugned order dated 22.11.2022 passed by learned Additional Sessions Judge, Gurdaspur vide which the petitioners have been summoned to face trial along with co-accused by allowing the application filed by the prosecution under Section 319 of Cr.P.C. in the case arising out of FIR No.137 dated 28.05.2020 registered under Sections 304-B, 34 of IPC at Police Station- City Batala.

2. Brief facts of the case are that the FIR (supra) was registered on account of the statement of respondent no.2, wherein, it was alleged that his daughter (now deceased) was married to Satwant Singh (co-accused) in October, 2016. At the time of marriage, dowry articles including gold ornaments were given to the accused. After marriage, Satwant Singh went to America, returned back to India after six months, and then again went to

America in December, 2017 and never returned back whereas the deceased was

residing with her in-laws and also gave birth to a male child. It was further alleged that the co-accused along with the present petitioners used to torture and beat the daughter of the complainant on account of not bringing sufficient dowry articles while demanding more dowry. On 28.05.2020, at about 9:00/9:30 AM, the daughter of the complainant telephonically called him and told him about the torture and beatings meted out to her by the accused and also requested him to come to her matrimonial home. The complainant consoled his daughter and told her that he would visit her in the evening and subsequently, on the same day at around 5:00 PM, he along with his brother Harjit Singh went to the matrimonial house of his daughter. When they reached the matrimonial house, the complainant and his brother heard noises of “*maar ditta maar ditta*” coming from inside the house. They immediately rushed to the second floor of the house and saw that the co-accused along with the present petitioners had tied the neck of his daughter with a *Dupatta* (cloth) and hanged her from a ceiling fan. When the complainant tried to rescue his daughter, the aforesaid accused started fighting with him and by the time he could untie her, his daughter passed away.

3. In consequence of the FIR (supra) and after completion of the investigation by the concerned police, final report under Section 173 Cr.P.C. was presented in the learned trial Court on 26.08.2020 against co-accused but not against the present petitioners. The learned trial Court framed charges against the co-accused on 22.12.2020. Thereafter, the prosecution moved an application dated 11.10.2022 under Section 319 Cr.P.C. before the learned trial Court for summoning the present petitioners as additional accused and the same was allowed vide impugned order dated 22.11.2022. Hence, the present revision petition.

4. Learned counsel appearing for the petitioners contends that the FIR (supra) was lodged by father of the deceased on false and frivolous allegations that he was an eye-witness to the alleged murder of his daughter. He further contends that the concerned police, after thoroughly investigating the allegations against the petitioners, kept them in Column No.2 since the allegations were found to be unsubstantiated. The final report under Section 173 Cr.P.C. was presented only against the husband, mother-in-law and father-in-law of the deceased. He submits that petitioners no.1 and 2 are brother-in-law and sister-in-law, i.e., *Jeth and Jethani*, who were living separately and had no concern with the matrimonial life of the deceased, whereas, petitioner no.3 is the married sister-in-law of the deceased who was also living separately. He vociferously contends that considering the facts and circumstances of the case at hand and the cavalier manner in which the impugned order has been passed, the same deserves to be set aside.

5. *Per contra*, learned counsel for respondent no.2-complainant opposes the prayer made by learned counsel for the petitioners on the ground that death of the deceased has taken place in her matrimonial home within 04 years of her marriage and at the time of the incident, the petitioners were present at the spot but the jurisdictional police authority has exonerated them without any justifiable cause. He further contends that the complainant himself is an eye-witness to the offence and his statement has been recorded as PW1, wherein, he has categorically mentioned the names of the petitioners and attributed specific roles to them.

6. Learned State counsel submits that all three petitioners are specifically named in the FIR (supra) and their actions are enunciated in the evidence on record which duly establishes their guilt. He submits that the

impugned order has been passed in accordance with law and after due appreciation of the evidence on record and thus, no interference is warranted by this Court.

7. I have heard the learned counsel for the parties and perused the material available on record. It transpires that the petitioners, despite being named in the FIR (supra), were exonerated in the final investigation report presented in the present case. Pertinently, the petitioners were found innocent by the Investigating Officer on the ground that they were not present at the place of occurrence and the same has been stated in the inquiry report dated 07.07.2020. Perusal of the record shows that it has been alleged by the complainant that he along with his brother reached the house of the petitioners at around 5 pm on 28.05.2020, i.e., the day of the incident but the CCTV footage shows that they actually reached at 6:16 pm. As such, the version of the complainant that he is an eye-witness to the alleged incident and that he could attribute specific roles to the petitioners remains unsubstantiated. Further perusal reveals that the allegations of dowry demand against the present petitioners lack specificity. Moreover, before the registration of the FIR (supra), no previous complaint was ever made by the complainant or his daughter (now deceased) to the concerned police or any other authority alleging torture or abuse at the hands of the present petitioners. Therefore, this Court is inclined to observe that there is lack of cogent evidence which can establish more than prima facie case against the petitioners.

8. 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 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. 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."

10. 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."

11. In view of the discussion made hereinabove, the present revision petition is allowed in the following terms: -

i. The impugned order dated 22.11.2022 passed by learned

Additional Sessions Judge, Gurdaspur, 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.

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

(HARPREET SINGH BRAR)
JUDGE

17.07.2024
Neha

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