



CRM-M-59495-2022

1

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

**CRM-M-59495-2022
Decided On: 28.10.2024**

ANU GARG**...Petitioner****V/S****STATE OF PUNJAB AND OTHERS****...Respondents****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

Present: Mr. P.K. Kapria, Advocate
for the petitioner.

Mr. Rishabh Singla, AAG, Punjab

Mr. K.S. Sidhu, Advocate
for respondents no.2 to 5

HARPREET SINGH BRAR J. (ORAL)

1. The instant petition has been preferred for setting aside the impugned order dated 12.05.2022(Annexure P-5) passed by learned Judicial Magistrate Ist Class, Bathinda vide which the application moved by the petitioner/complainant under Section 319 Cr.P.C. has been dismissed in case arising out of FIR No.35 dated 21.07.2018 under Sections 406, 498-A, 109 of IPC at Police Station- Women, District Bathinda as well as for setting aside the impugned order dated 01.10.2022(Annexure P-6) passed by learned Additional Sessions Judge, Bathinda vide which her revision petition against the order dated 12.05.2022 has been dismissed.

2. Succinctly, facts that the petitioner lodged FIR (supra) against her husband (accused), father-in-law (respondent no.2), mother-in-law (respondent no.3), brother-in-law (respondent no.4) & sister-in-law (respondent no.5), wherein, allegations were levelled against them for harassing her for dowry and treating her with cruelty. However, upon



completion of investigation by the jurisdictional police, the final police report was filed only against the accused husband whereas the names of the remaining accused, i.e., the private respondents were kept in Column No.2 of the report. Subsequently, charges were framed against the accused husband and the petitioner deposed as PW-1 before the learned trial Court to prove those charges. After conclusion of the examination-in-chief of the petitioner before the learned trial Court, the prosecution moved an application under Section 319 Cr.P.C. for summoning the private respondents as additional accused. After hearing the matter, the aforesaid application was dismissed by the learned trial Court causing the petitioner to approach the revisional Court below, however, the revision petition also met the same fate. Affronted, the petitioner has assailed both orders of dismissal before this Court by way of the present petition.

3. Learned counsel appearing for the petitioner vociferously contends that the learned Courts below have erred by ignoring the overwhelming evidence present against the private respondents which has been duly corroborated by the petitioner in her examination-in-chief. The petitioner has categorically deposed in her statement (Annexure P-4) regarding the specific role played by the private respondents in committing the alleged offences. It is further argued that the Investigating Officer (IO) has played a dubious role in exonerating the private respondents despite the fact that the petitioner had provided CD/video as well as photographic evidence (Annexure P-2) to him quite early in the investigation. Collusion on the part of IO was also objected to by the petitioner in her complaint made to the higher police authorities requesting to change the investigating officer but to no avail. Further argued that revisional Court below erred in



dismissing the revision petition of the complainant by taking a hyper-technical approach qua a procedural error which could have been easily rectified. It is contended that there is sufficient evidence on record to establish a more than prima facie case against the private respondents as required for summoning them under Section 319 Cr.P.C.

4. Learned counsel appearing on behalf of the private respondents argues that the case of the petitioner is based on vague and omnibus allegations and there is not even a single piece of substantial evidence to cause the summoning of the private respondents as additional accused.

5. Learned state counsel submits that the complainant has categorically deposed in her examination-in-chief regarding involvement and complicity of the private respondents, thereby, duly corroborating the allegations levelled by her in her complaint which culminated in FIR (supra).

6. I have heard the learned counsel for the parties and perused the material available on record. It transpires that the FIR (supra) is the culmination of the complaint dated 07.05.2018 moved by the petitioner before the jurisdictional police as well as the complaint dated 09.05.2018, wherein, further allegations were made against the accused persons including the private respondents. However, a perusal of the material available shows that not even a whisper has been made in the complaints qua the role of the private respondents for demanding any dowry from the petitioner or her family members. The allegations pertaining to taunts and beatings meted out to the petitioner on account of dowry demand are also of indistinct character. Furthermore, the statement made by the petitioner as

PW-1 before the learned trial Court is plagued by lack of specificity. She has



failed to attribute any specific role to the private respondents therein. In absence of any explicit material to affix the role of the private respondents in committing the alleged offences, they have been rightly kept in column no.2 of the police report. The contentions of the petitioner regarding biased conduct of the Investigating Officer (IO) are also of no help to her since she has failed to put forth her version even before the learned trial Court, where the IO played no role, in a manner where any particular role could be attributed to them.

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 un rebutted, 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 with parsimony, 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 must refrain themselves from exercising the extraordinary power under Section 319

11. Taking into consideration facts and circumstances of the case at hand, especially the fact there is not even an iota of evidence against the private respondents, this Court is of the opinion that case of the prosecution does not satisfy the test of more than prima facie case against them which is *sine qua non* to summon any person as an additional accused under Section 319 Cr.P.C. as enunciated in **Hardeep Singh's case (supra)**.

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

28.10.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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