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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-54497-2024 (O&M)
Date of decision: 05.11.2024

Harpreet Kaur

...Petitioner

Versus

Gurmeet Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Robindeep Singh Bhullar, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. This petition has been filed under Section 528 of the Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short 'BNSS') for quashing of the
impugned order dated 06.06.2024 passed by learned Sessions Judge, Faridkot,
vide which the order dated 19.04.2023 passed by learned Judicial Magistrate
1st Class, Faridkot, dismissing the application moved by the petitioner under
Section 319 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.')
[now Section 358 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short
'BNSS')], was upheld. It is further prayed that respondents No.1 to 3 be
summoned as additional accused in the case stemming from FIR bearing



No.156 dated 15.07.2017 under Sections 498-A, 406, 420, 120-B of the Indian Penal Code, 1860 (for short 'IPC'), registered at Police Station City, Faridkot.

2. Succinctly, the facts as alleged by the petitioner-complainant are that her marriage was solemnized with one Rachhpal Singh. Subsequently, matrimonial discord ensued between the two, which ended up in the registration of FIR (*supra*) against the husband and the intercessor, namely, Puran Singh. Upon completion of the investigation, final report under Section 173 of Cr.P.C. (*now Section 193 of BNSS*) was presented against the same persons i.e. the husband and the intercessor. Once the trial commenced and the petitioner was examined as prosecution witness, she preferred an application under Section 319 of Cr.P.C. (*now Section 358 of BNSS*) seeking summoning of respondents No.1 to 3, who are father-in-law, mother-in-law and the wife of the intercessor, respectively, as additional accused. The application, however, was dismissed by learned trial Court, which was upheld by learned revisional Court. Aggrieved by the same, the petitioner has approached this Court by way of filing the instant petition.

3. Learned counsel for the petitioner vociferously contends that learned Courts below have erred by ignoring the overwhelming evidence presented against respondents No.1 to 3, which has been duly corroborated by the petitioner in her deposition. Respondents No.1 to 3 along with the intercessor were completely aware of the first marriage of Rachhpal Singh and



a criminal case pending against him. Moreover, there are specific allegations qua respondents No.1 & 2 regarding physical assault and harassment meted out to the petitioner. Learned counsel further avers that no cogent reasons were given by the jurisdictional police, which would justify their exoneration. The finding of learned revisional Court that there is an absence of sufficient material against respondents No.1 to 3, is untenable since testimony of the petitioner itself is a sufficient ground to summon them under Section 319 of Cr.P.C. (*now Section 358 of BNSS*).

4. Having heard learned counsel for the petitioner and after perusing the record of the case with his able assistance, it transpires that the initial complaint moved before the Senior Superintendent of Police, Faridkot does not allude to any specific allegations qua respondents No.1 to 3. The allegations are vague and omnibus in nature. Merely because the petitioner stated the names of respondents No.1 to 3 in her deposition, cannot be the sole basis of summoning them as additional accused. It is trite law that the Court in such cases is under an obligation to adopt a higher standard of appreciation of evidence. The standard to be applied lies between the threshold of a mere *prima facie* case, as considered during the framing of charges, and the level of assurance that unrebutted evidence would result in conviction. Unless this level of satisfaction is met, the Court should exercise restraint in invoking its authority under Section 319 of Cr.P.C. (*now Section 358 of BNSS*).



5. At this juncture, it is important to discuss the scope of Section 319 of Cr.P.C. (now Section 358 of BNSS). 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 of Cr.P.C. (now Section 358 of BNSS) and 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."

6. Subsequently, the Hon'ble Supreme Court in the case of ***Sagar Vs. State of Uttar Pradesh and another, Criminal Appeal No. 397 of 2022***

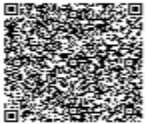


(*Arising out of SLP(Crl) No.7373 of 2021*), while referring to **Hardeep Singh**'s case (*supra*), observed as follows:

"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."

7. Recently, the Hon'ble Supreme Court in case of **Juhru & Ors. Versus Karim & Anr. 2023 AIR (Supreme Court) 1160** elaborated upon the scope of section 319 of Cr.P.C. (now Section 358 of BNSS) 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.”

8. Taking into consideration the facts and circumstances of the case, this Court is of the opinion that mere statement of the petitioner, unsubstantiated by any credible material, does not breach the threshold of more than *prima facie* case against respondents No.1 to 3, which is *sine qua non* to summon someone as an additional accused under Section 319 of Cr.P.C. (*now Section 358 of BNSS*) as enunciated in **Hardeep Singh's** case (*supra*). Accordingly, the instant petition is dismissed being bereft of any merit.

9. All the pending miscellaneous application(s), if any, shall stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

05.11.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No