



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR No.2894 of 2023
Date of decision: 24.05.2024

Gurjeet Kaur ... Petitioner

Vs.

State of Punjab and another ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Kuldip Singh, Advocate,
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab,
for the respondent-State.

MANISHA BATRA, J. (Oral)

1. The present revision petition has been filed challenging the order dated 27.10.2023 passed by the Court of learned Additional Sessions Judge, Fast Track Special Court, (POCSO) Fazilka in Sessions Case No.SC-30 of 2023 titled as State v. Manpreet Singh arising out of FIR No.65 registered under Sections 304-B and 34 of IPC at Police Station City 2 Abohar, District Fazilka, whereby an application as filed by the petitioner for summoning Karamjeet Kaur wife of Beant Singh, resident of Village Amla Singh Wala, Tehsil and District Barnala as additional accused, had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of

2024:PHHC:074785



the present petition are that the aforementioned FIR was registered on 31.07.2022 on the basis of statement recorded by the complainant Gurjeet Kaur alleging therein that her younger daughter Harpreet Kaur was married with the accused Manpreet Singh on 28.02.2021. Three-four months after her marriage, her husband Manpreet Singh and mother-in-law Karamjeet Kaur started harassing her on account of demand of dowry. They used to extend beatings to her. Her daughter used to narrate the details of her woes to them through phone. In August 2021, she had tried to end her life by consuming some poisonous substance due to being fed up with the behaviour of Manpreet Singh and her mother-in-law Karamjeet Kaur. The complainant and her son, however, came to know about this fact and had brought her to their house and she was got treated by them as she was in critical condition at that time. She further alleged that eversince then, her daughter was residing with her but she used to say that she was fed up with her husband and mother-in-law and wanted to die. The complainant used to pacify her.

3. The complainant further alleged that on 27.07.2022, they had gone at Police Station Thuliwala as they were summoned by the police in connection with inquiry of the complaint lodged by them against the accused. Then on 30.07.2022, while the daughter of the complainant was alone at her house, she committed suicide by hanging herself with a ceiling fan. On reaching home, she had seen her and raised alarm. She alleged that her daughter had committed suicide due to the harassment given by her husband Manpreet Singh and mother-in-law Karamjeet

2024:PHHC:074785



Kaur. On the basis of these allegations, a case under Sections 304-B read with Section 34 of IPC was registered. Investigation proceedings were initiated. The accused Manpreet Singh was arrested. The proposed accused Karamjeet Kaur was, however, found to be innocent and had not been arrested and challaned. After completion of necessary investigation and usual formalities, challan was presented against the accused Manpreet Singh. The present petitioner who is the complainant of the abovementioned FIR had moved an application under Section 319 of Cr.P.C. for summoning Karamjeet Kaur as additional accused and for trial along with the co-accused Manpreet Singh. However, vide the impugned order dated 27.10.2023, the said application had been dismissed and feeling aggrieved by the same, the petitioner-complainant has filed the present revision petition.

4. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law and is liable to be set aside. The proposed accused Karamjeet Kaur was not only named in the FIR but also in the testimony of the petitioner as recorded before the trial Court. Specific allegations were levelled against her that she along with the accused already arraigned used to taunt and harass the daughter of the petitioner on the pretext of bringing less dowry and played an active role in abetting the suicide by the deceased. It is argued that the learned trial Court passed a casual order in a mechanical manner without properly going through the evidence produced on record and with these submissions, it is urged that the petition deserves to be allowed.

2024:PHHC:074785



5. Learned State counsel has argued that after conducting thorough investigation in the matter, the proposed accused was found to be innocent and that is why she had not been arrested and challaned.

6. I have heard learned counsel for the parties at considerable length and have gone through the record carefully.

7. Section 319 of Cr.P.C. empowers the Court to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his/her involvement in the offence, as an accused and direct him/her to be tried along with other accused. The principle of law with reference to exercise of jurisdiction under this Section has been well settled by the Constitution Bench of Hon'ble Supreme Court in a celebrated pronouncement cited as **Hardeep Singh and others Vs. State of Punjab and others**, (2014) 3 SCC 92, wherein it was observed that the power under Section 319 Cr.P.C. is discretionary and an extraordinary power. It has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. 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 material placed before the Court that such power should be exercised and not in a casual and cavalier manner. It was also observed 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 strong evidence than mere probability of

2024:PHHC:074785



his complicity. The test that has to be applied is one which is more than prima facie case as has been established 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 of Cr.P.C.

8. Reference can also have made to a recent pronouncement of Hon'ble Supreme Court cited as **Sagar Vs. State of UP and another**, (2022) 6 SCC 389 wherein the Apex Court observed as under:-

“ 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 notice 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. It is also well settled proposition of law that an order under Section 319 of the Cr.P.C. should not be passed only because the first informant or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be assigned by the Court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. The evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction and for this purpose, the Courts are required to apply stringent tests, one of such tests being whether evidence on record is such which would reasonably lead to

2024:PHHC:074785



conviction of the person sought to be summoned.

10. On applying the abovesaid proposition of law to the peculiar facts and circumstances of the present case, it has been observed that the aforementioned FIR was registered on the basis of statement recorded by the petitioner on 31.07.2022 alleging that the victim who was her daughter was harassed by the accused Manpreet Singh already arraigned who was her husband and the proposed accused Karamjeet Kaur i.e. her mother-in-law on account of demand of dowry and they used to extend beatings to her. It was also alleged that she had consumed some poisonous substance in August 2021 and since then she was residing in her parental house with the present petitioner. Admittedly, she died a suicidal death on 30.07.2022 in her parental home. She was residing separately from the accused Manpreet Singh and the proposed accused for a period of over 11 months. The proposed accused had been found to be innocent during investigation and had not been arrested and challaned. The respondent-State sought to summon her as an additional accused after recording of statement of the complainant PW-1 Gurjeet Kaur in the Court by way of examination-in-chief copy of which has been placed on record as Annexure P-4. The learned trial Court had dismissed this application by observing that the complainant had made certain improvements in her sworn deposition with regard to entrustment of dowry articles to the accused persons. The FIR of this case was lodged under Section 304-B of IPC. The Hon'ble Supreme Court in case of **Kans Raj v. State of Punjab**, (2000) 5 SCC 207, has laid down the following



ingredients which need to be proved against the accused persons before they can be convicted under Section 304-B of IPC:-

- “a. The death of a woman must be caused by burns or bodily injury or had occurred otherwise than under normal circumstances;
- b. Such death should have occurred within 7 years of her marriage;
- c. The deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;
- d. Such cruelty or harassment should be for or in connection with the demand of dowry; and
- e. To such cruelty or harassment the deceased should have been subjected soon before her death.”

11. A bare perusal of provision of Section 304-B of IPC and in view of the observation as made by Hon'ble Supreme Court in the authorities cited above, it is explicit that to convict a person under Section 304-B of IPC, the most essential aspect which needs to be proved is that the cruelty or harassment for bringing insufficient dowry must be "soon before her death".

12. Now the question that arises for consideration is as to what period may be considered as “soon before death”. The Hon'ble Supreme Court has discussed the scope of the expression "soon before death" in several judicial pronouncements. Reference can be made to **Satvir Singh v. State of Punjab**, (2001) 8 SCC 633 wherein while discussing the scope of expression "soon before her death" the Hon'ble Supreme Court observed as under:-

- “22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304B is to be invoked. But it should have happened "soon before her death". The said phrase, no doubt, is an elastic expression and can refer to a

2024:PHHC:074785



period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the harassment or cruelty would not have been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death."

13. Similar proposition of law was laid down in **Kaliyaperumal v. State of T.N.**, (2004) 9 SCC 157.

14. In the instant case, as discussed above, since the victim was residing in her parental house from the last about 11 months when she committed suicide, therefore, no perceptible nexus between the dowry related harassment or cruelty inflicted upon the victim "Soon before her death" can even be prima facie made out because even if the allegations are taken on the face of the record, still there was gap of 11 months between the death of the victim and the alleged demand of dowry and her harassment or cruelty on account of such demand. It cannot be, therefore, stated that the victim was subjected to cruelty or harassment by the proposed accused soon before her death. Further, though it was alleged that her daughter was harassed and extended beatings by the proposed

2024:PHHC:074785



accused and accused already arraigned on account of demand of dowry but there was no allegation as to what was demanded and to at which particular point of time and further by which particular person out of the two persons named in the FIR. The learned trial Court had found that her statement was not sufficient to summon the proposed accused Karamjeet Kaur as additional accused to face trial along with the accused Manpreet Singh already arraigned. The learned trial Court had also taken up all these points into consideration and in my considered opinion, it has rightly refrained itself from exercising power under Section 319 of Cr.P.C. and summoning the proposed accused as such. Accordingly, finding no valid reasons to take a view different as that from the learned trial Court, I find no reasonable ground to interfere with the impugned order, the petition is dismissed.

24.05.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No