



271

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

CRM-M-7279-2020

Date of Decision:- 22.01.2025

AJAY KUMAR

...Petitioner

Vs.

STATE OF PUNJAB AND ANOTHER

...Respondents

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Ankur Bansal, Advocate for the petitioner.
Mr. Kewal Singh, Addl. A.G. Punjab.
None for respondent No.2.

AMARJOT BHATTI, J.

1. Petitioner Ajay Kumar filed petition under Section 482 Cr.P.C. read with Section 483 Cr.P.C. for quashing of impugned order dated 21.03.2017 (Annexure P-1) whereby petitioner has been summoned on application under Section 319 Cr.P.C. in case No.190/2014 dated 21.08.2014 titled as “State Vs. Surinder Kaur and others” arising out of FIR No.33 dated 26.03.2014 under Section 498-A of IPC, registered at Police Station Goraya (Annexure P-4) pending before the learned Judicial Magistrate 1st Class, Phillaur, District Jalandhar as the impugned order has been passed in a mechanical and cryptic manner without application of mind and in gross contravention of law laid down by Hon’ble Supreme Court in case titled as “*Hardeep Singh Vs. State of Punjab 2014 (3) SCC 92*”.

2. Facts of the case are, FIR No.33 dated 26.03.2014 (Annexure

2025:PHHC:009487



P-4) was registered on the written complaint No.2326 *peshi* dated 11.11.2013 addressed to SSP Rural, Jalandhar against Chinder Pal husband, Manjit Kaur, Gagandeep Gona, Kamaljit Kaur, Rachna, Surinder Kaur sister-in-law, Rakesh Kumar, Ashwani, Rahul, Ajay, Dharmpal and Rajpal wherein it is stated that she got married with Chinder Pal in the year 2005. Out of this wedlock, she gave birth to a son who is now 5 years old. Her husband had gone abroad. He was living abroad for the last 3 years continuously and had never sent maintenance nor called her on telephone. She was dependent on her parents for her survival. After marriage, she was harassed and ill-treated by her husband Chinderpal and other members of in-laws family as detailed in the complaint. She was told that in case she gave birth to a girl child then she will not be kept in the house. She was even beaten up by the accused as detailed in the complaint. All the accused forced her to give divorce to her husband. She wanted to reside with her husband in in-laws house, but she was continuously threatened by all the accused. On one occasion, accused persons even tried to kill her. She was under constant threat. Even Panchayat of the village along with accused told her to give divorce to her husband but she refused. With these allegations, present FIR was registered.

3. As per record after completion of investigation, challan was presented against Surinder Kaur and Manjit Kaur whereas Chinder Pal was declared proclaimed person and the other accused named in the complaint were found to be innocent. Chargesheet was framed and the statement of complainant was recorded and application was filed under Section 319 Cr.P.C. for summoning of additional accused including present petitioner.

Said application was disposed of by passing impugned order dated

2025.PHHC.009487



21.03.2017 (Annexure P-1) vide which present petitioner Ajay Kumar along with Rakesh Kumar @ Billu, Ashwani and Rahul were ordered to be summoned to face trial along with the accused who were already facing trial. Feeling aggrieved of this order, present petition has been filed.

4. Learned counsel representing petitioner argued that petitioner Ajay Kumar was not named in the FIR and during investigation he was found innocent thus not challaned by the police. Complainant/respondent No.2 filed application under Section 319 Cr.P.C. to harass the petitioner. Ajay Kumar was residing along with his family in a separate house and had no concern with the family life of Chinder Pal. Copy of ration card is annexed as Annexure P-11. Petitioner had no interference in the house of Chinder Pal. In-fact, he is nephew of Chinder Pal husband of complainant. Detailed inquiry was conducted by the police on the complaint filed by respondent No.2. Copy of complaint is Annexure P-2 and inquiry report is Annexure P-3. During the proceedings of the trial respondent No.2/complainant stepped into witness box as PW1. Her statement is Annexure P-7. There are no allegations against petitioner for causing any kind of harassment on account of demand of dowry. Application under Section 319 Cr.P.C. (Annexure P-8) was filed against 9 persons including present petitioner and somehow learned Trial Court summoned present petitioner along with Rakesh @ Billu, Ashwani, Rahul, even though there are no specific allegations against them. However, others were not summoned against whom similar allegations were raised.

To support his arguments, learned counsel representing petitioner has relied upon the judgment of **Hon'ble Apex Court in Hardeep Singh Vs. State of Punjab 2014 (3) SCC 92** in which issue has been



discussed in detail as to when, at what stage and under what circumstances Magistrate can summon a person as additional accused on application under Section 319 Cr.P.C. Without considering said parameters of law, learned Judicial Magistrate 1st Class, Phillaur has passed impugned order dated 21.03.2017 vide which he along with others has been summoned to face trial in the aforesaid FIR. Therefore, impugned order is without application of judicious mind and the same deserves to be quashed by accepting present petition.

5. Learned counsel representing State filed status report confirming the factual position regarding presentation of challan against Surinder Kaur and Manjit Kaur whereas Chinder Pal has been declared as proclaimed person. It is confirmed that complaint was filed by respondent No.2 which was inquired and no evidence came on record during inquiry against the present petitioner who is nephew of Chinder Pal. Therefore, present petitioner was not challaned. Now he has been summoned on application under Section 319 Cr.P.C. along with other accused vide order dated 21.03.2017 (Annexure P-1). It is confirmed that present petitioner is not involved in any other case.

State counsel further argued that impugned order dated 21.03.2017 does not require any interference. He along with other co-accused was specifically named in the complaint (Annexure P-2) addressed to SSP Rural, District Jalandhar on the basis of which FIR No. 33 dated 26.03.2014 (Annexure P-4) was registered. Statement of Reena Kumari – respondent No.2 recorded as PW1 is Annexure P-7 where she has levelled specific serious allegations against the accused including present petitioner.

Therefore, order passed by the trial Court on application under Section 319

2025.PHHC.009487



Cr.P.C. summoning the present petitioner along with other accused is fully justified and does not require any interference.

6. I have considered the arguments and have gone through the record carefully. Factual position is not disputed. Initially respondent No.2 filed complaint (Annexure P-2) dated 11.11.2013 against Chinder Pal and his family members including present petitioner. Matter was inquired. Copy of Inquiry report dated 10.03.2014 prepared by DSP Rural Jalandhar is Annexure P-3 where Chinder Pal, Manjit Kaur and Surinder Kaur were found to be harassing the complainant/respondent No.2 for bringing insufficient dowry and the registration of case was recommended qua them alone. Copy of FIR No.33 dated 26.03.2014 is Annexure P-4. Copy of challan report is Annexure P-5. Since Chinder Pal was declared proclaimed person, chargesheet was framed against Surinder Kaur and Manjit Kaur. Copy of Chargesheet dated 17.11.2015 is Annexure P-6. Thereafter, application under Section 319 Cr.P.C. dated 09.12.2016 (Annexure P-8) was filed and after appreciating testimony of Reena Kumari respondent No.2 (Annexure P-7) impugned order dated 21.03.2017 (Annexure P-1) has been passed which is assailed by the present petitioner.

7. Manjit Kaur filed criminal misc.12257-2017 (O&M) petition under Section 482 of Cr.P.C for quashing of FIR and subsequent proceedings in the aforesaid FIR which was accepted vide order dated 30.01.2020.

8. I have considered the facts of the case and the surrounding circumstances. Respondent No.2 complainant is wife of Chinder Pal who as per the statement of complainant/respondent No.2 (Annexure P-7) visited India from time to time and during this period respondent No.2 gave birth to a son. There remained dispute between husband and wife in the matrimonial



home. At the time of filing of complaint (Annexure P-2) husband stopped visiting India for the last about 3 years and did not give maintenance to her and her son. It is alleged that she was totally dependent on her parents. For some time, she was staying in the parental house and at times in the village of her in-laws family. Present petitioner is the nephew of her husband Chinder Pal who admittedly lived in separate house along with his family. In the complaint (Annexure P-2) there are general allegations against present petitioner as no specific incident of cruelty has been detailed falling under the provisions of Section 498-A IPC. While appearing in the Court as PW1 Reena Kumari in her statement (Annexure P-7) has given the detail of all facts which are not even mentioned in the complaint (Annexure P-2). Section 319 Cr.P.C. empowers the Court to summon accused who has not been named or challaned by the Investigating Agency. Section 319 Cr.P.C. runs as under:-

319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest

2025.PHHC.009487



or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then -

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

Gainful reference can be made to the judgment of Hon'ble Supreme Court of India in case titled as ***Ramesh Chandra Srivastava Vs. State of U.P 2021 (4) R.C.R. (Criminal) 219***, para No.8 runs as under:-

"8. We say this for the following reason:-

The test as laid down by the Constitution Bench of this Court for invoking power under Section 319 Cr.P.C. inter alia includes the principle that only when strong and cogent evidence occurs against a person from the evidence the power under Section 319 Cr.P.C. should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by this Court, is one which is more than prima facie case which is applied at the time of framing of charges."

On summoning of additional accused, there are various other judgments i.e. of Hon'ble Supreme Court of India, Constitution Bench

Hardeep Singh Vs. State of Punjab 2014 (3) SCC 92, another judgment of

2025:PHHC:009487



Hon'ble Supreme of India, Constitution Bench Sukhpal Singh Khaira Vs. The State of Punjab 2022 (4) crimes 644 where time and again it is explained that summoning of additional accused under Section 319 Cr.P.C. can be invoked in case of strong and cogent evidence appear against the person. Otherwise summoning of accused at very threshold of the trial on application under Section 319 Cr.P.C. is discouraged. Mere prima facie case is not sufficient to summon the accused. Therefore, prosecution is required to establish by producing sufficient evidence on record to justify summoning of additional accused by invoking provision of Section 319 Cr.P.C. In the case in hand, learned trial Court failed to consider the initial stand of complainant/respondent No.2 and the allegations against the present petitioner as well as specific role attributed to him for ill-treatment of the respondent No.2/complainant. No specific incident when he caused harassment to the lady.

9. Therefore, summoning of present petitioner as additional accused by passing impugned order 21.03.2017 (Annexure P-1) is not on sound footing and the same is set aside. Resultantly petition filed by petitioner for quashing of impugned order dated 21.03.2017 qua petitioner Ajay Kumar is accordingly accepted.

(AMARJOT BHATTI)
JUDGE

22.01.2025

snd

Whether speaking/reasoned: Yes/No.

Whether reportable: Yes/No