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

**CRM-M-64248-2024
Date of Decision: 06.02.2025**

Sonu Kumari

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Ms. Nargis, Advocate for
Mr. Sandeep Goyat, Advocate for the petitioner.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present petition has been filed under Section 528 of the BNSS, 2023 praying for quashing of the impugned order dated 20.11.2024 (Annexure P-5) passed by learned ASJ, Hisar whereby the revision petition filed by the petitioner has been dismissed which was filed against the impugned order dated 13.04.2023 passed by learned JMIC, Hisar vide Annexure P-3 whereby the application under Section 319 Cr.P.C. was filed by the petitioner for summoning of respondent No.2, namely, Jagmender @ Monu as an additional accused has been dismissed.

2. Ms. Nargis, learned counsel appearing on behalf of the petitioner has submitted that the petitioner is the wife and she got registered an FIR bearing No.642, dated 01.07.2017, under Sections 498-A, 406, 323, 506 & 34 IPC at Police Station Sadar Hisar, District Hisar against her husband, father-in-law, mother-in-law and also against her brother-in-law, namely, Jagmender alias Monu (Respondent No.2). She further submitted that the police investigated the case and thereafter, respondent No.2- Jagmender alias Monu, who is the brother-in-law (Devar) of the petitioner,



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was declared to be innocent and was exonerated by the police. Thereafter, during the trial when the petitioner stepped into the witness-box as prosecution witness, she made a statement and on the basis of which, an application was moved under Section 319 Cr.P.C. for summoning of the aforesaid Jagmender alias Monu as an additional accused.

3. Learned counsel for the petitioner further submitted that it is a case where the marriage between the petitioner and her husband, namely, Dapender took place on 15.04.2016 with great pomp and show and a number of articles and other jewellery etc. was entrusted with the in-law's family and huge amount of money was spent on marriage. Thereafter, the matrimonial discord took place and her in-law's started demanding dowry and also maltreated her. She also submitted that specific allegations were also levelled by the petitioner against the aforesaid Jagmender @ Monu, who is sought to be summoned as an additional accused to the affect that he tried to molest her and rather tried to rape her 2-3 times because of the aforesaid matrimonial discord with her husband and at the same time, allegations of similar nature were also leveled by the petitioner against her own father-in-law but the police had challaned only the husband and the father-in-law but not the brother-in-law (Devar) and therefore, the aforesaid application under Section 319 Cr.P.C. was filed. She submitted that both the orders passed i.e. by learned JMIC, Hisar and also by learned Additional Sessions Judge, Hisar are liable to be set aside because there are direct allegations levelled by the petitioner against respondent No.2-Jagmender @ Monu and he is required to be summoned as an additional accused.

4. I have heard the learned counsel for the petitioner.

5. The application under Section 319 Cr.P.C. has been dismissed

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by learned JMIC, Hisar and a perusal of the same would show that the petitioner levelled allegations against Jagmender @ Monu, who was sought to be summoned as an additional accused but at the time of investigation, the allegations were not substantiated and rather he was found to be innocent. Learned JMIC, Hisar also observed that the power to summon an additional accused has to be exercised in a very careful manner with abundant caution and there was no evidence or material available on record in this regard against the aforesaid brother-in-law (Devar) of the petitioner who was sought to be summoned as an additional accused and therefore, the aforesaid application was dismissed.

6. When the petitioner filed a revision petition before learned Additional Sessions Judge, Hisar, then the learned Additional Sessions Judge discussed not only the factual position but also the legal position in this regard in detail. It was so observed by learned Additional Sessions Judge that the complainant had made allegations in the FIR against the aforesaid Jagmender @ Monu that he tried to outrage her modesty 2-3 times and harassed her for dowry but when the matter was investigated by the police, he was found to be innocent. However, it was thereafter so stated by the petitioner while deposing before the Court at the time of trial that the aforesaid incident took place in the month of May, 2016 whereas the petitioner moved a complaint to the police on 08.05.2017 i.e. after about 1 year of the alleged incident and in the meantime no complaint was made by the petitioner or by her parents to the police or to any other person. Learned Sessions Judge also was of the view that in the matrimonial disputes mud-slinging generally takes place between the parties and the parties generally indulge in all types of filthy allegations against each other and the real



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picture is seldomly revealed to the Court and therefore, mere levelling allegations without any substantial evidence to that effect, nobody can be summoned as an additional accused. Learned Sessions Judge also referred to a judgment passed by a Constitutional Bench of Hon'ble Supreme Court in "***Hardeep Singh Vs. State of Punjab***" (2014) 3 SCC 92 and on the strength of the aforesaid judgment, came to the conclusion that there was no illegality or perversity found in the order passed by learned JMIC, Hisar and therefore, the revision petition was dismissed.

7. So far as the legal position pertaining to the exercise of power under Section 319 Cr.P.C. is concerned, the same is no longer *res integra*. A Constitutional Bench of Hon'ble Supreme Court in ***Hardeep Singh's case (Supra)*** observed that at the time when the Court is to exercise its power under Section 319 Cr.P.C. then it has to be exercised in a very cautious manner because it affects the liberty of an individual. There has to be cogent and strong reason for summoning an additional accused and rather there has to be recording of more than *prima facie* satisfaction based upon the material that a person should be summoned as an additional accused. The standard of proof is also on the higher footing as that of the standard which is there at the time of framing of the charges. The relevant portion of the judgment of Hon'ble Supreme Court in ***Hardeep Singh's case (Supra)*** is reproduced as under:-

"105. Power under section 319 CrPC, 1973 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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under section 319 CrPC, 1973. In section 319 CrPC, 1973 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 CrPC, 1973 to form any opinion as to the guilt of the accused."

8. A perusal of the FIR wherein allegations have been levelled against the husband and his family members including the aforesaid Jagmender @ Monu would show that the allegations have been levelled in a very causal manner and rather evasive allegations have been made so far as the aforesaid Jagmender @ Monu is concerned. It has been alleged in the complaint made by the petitioner which has been transformed in the FIR that the aforesaid Jagmender @ Monu tried to molest her 2-3 times but at the time of deposition before the Court, the petitioner had stated that the incident took place in the year 2016 and the complaint was made to the

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police after one year i.e. in May, 2017. No complaint was made to anybody including the police or to her own family members in this regard. Interestingly in the later part of the FIR, the petitioner has also levelled allegations of outraging her modesty against the father-in-law in the same fashion. In other words, the petitioner levelled vague allegations against her brother-in-law and also against her father-in-law for trying to outrage her modesty. When learned trial Court was considering the aforesaid aspect, the trial Court was conscious of the fact that now a days the law is being misused and all kinds of allegations are made against the relatives of the husband as well. Mud-slinging on the family members of the husband has become a normal and routine feature.

9. Be that as it may, purely on the position of law based upon the facts of the present case, when learned trial Court is to exercise its power under Section 319 Cr.P.C., the trial Court was bound by the law laid down by Hon'ble Supreme Court and the extent of powers to be exercised by him. There was no other sufficient material available with the Magistrate nor it is reflected in the order to have summoned the aforesaid Jagmender @ Monu as an additional accused. In the absence of the sufficient material and in the absence of arriving at a more than *prima facie* satisfaction for the purpose of summoning of an additional accused the liberty of any person to be summoned cannot be jeopardized by way of evasive allegations against the family members of the husband.

10. When learned Revisional Court considered the submissions of the petitioner, the law laid down by Hon'ble Supreme Court was also considered in the facts and circumstances of the present case on the same footing. After hearing the learned counsel for the petitioner and perusing



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both the aforesaid impugned orders, this Court is of the considered view that no illegality or perversity can be found in both the impugned orders passed vide Annexures P-3 & P-5, respectively.

11. Consequently, finding no merit in the present petition, the same is hereby dismissed.

06.02.2025

Bhumika

**(JASGURPREET SINGH PURI)
JUDGE**

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |