

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

**Date of decision : March 30, 2007**

Shanti Devi and others

....Petitioners

versus

State of Haryana

....Respondent

**Coram: Hon'ble Mr. Justice Virender Singh**

Present : Mr. K.G.Chaudhary, Advocate, for the petitioners  
Mr. Dinesh Arora, AAG Haryana  
Mr. R.K. Jain, Advocate, for the complainant

**Judgment**

The instant revision petition has been filed by the present three petitioners against the impugned order dated 30.10.2000 passed by learned Sessions Judge, Sonapat vide which while allowing the application filed by the State under section 319 of the Code of Criminal Procedure, they have been summoned to face trial.

Record reveals that while issuing notice of motion to the respondent-State, the proceedings before the trial court were stayed way

back on 20.11.2000.

**Brief facts:**

At the instance of complainant Dharminder, the real brother of Sumitra Devi (since deceased), case FIR No. 13 dated 25.10.1999, under sections 498-A, 304-B, 201 IPC was registered against the petitioners, Maha Singh husband of petitioner no. 1 and Bhupinder the husband of deceased alleging that after solemnisation of the marriage with Bhupinder on 1.5.1993, the family members of her in-laws had started making demands. Sumitra Devi ultimately died an un-natural death on 22.10.1999. The allegation was that in fact she was killed and without informing the parents, her dead body was cremated. The police after registering the case under sections 304-B, 498-A, 201 IPC started the investigation and found the present petitioners to be innocent. Consequently, they were put in column no. 2. Subsequently, after recording of the statement Annexure P/3 of Dharminder (complainant), an application under section 319 Cr.P.C. for summoning the petitioners was moved and was allowed vide impugned order dated 30.10.2000 (Annexure P/1). Hence, this revision petition.

I have heard Mr. Chaudhary, learned counsel for the petitioner, Mr. Dinesh Arora, learned Assistant Advocate General, Haryana assisted by Mr. R.K.Jain, learned counsel for the complainant.

Mr. Chaudhary submits that the approach of the learned trial court is totally illegal and contrary to the facts inasmuch as there was no

material before the trial court for the purpose of summoning the petitioners. The learned counsel then submits that Dharminder (PW4) has categorically admitted in his cross-examination that while making complaint to the police, he did not mention that the present petitioners used to raise demand of valuable articles or humiliate the deceased. According to him, the perusal of the substantive statement of Dharminder, the real brother of the deceased if seen in its totality does not warrant summoning of the petitioners and therefore, the learned trial court has mechanically passed the impugned order without there being any evidence against them. The learned counsel submits that petitioner no. 1 is mother-in-law whereas petitioner no. 2 is her son (younger brother of the husband) and petitioner no. 3 is married sister-in-law.

In support of his aforesaid contentions, Mr. Chaudhary relies upon a judgment of Hon'ble Apex Court rendered in **Michael Machado v. Central Bureau of Investigation**, 2000(2) RCR (Criminal) 75 and two judgments of this Court rendered in **Surjit Kaur and others v. State of Punjab and another** 2006(1) RCR (Criminal) 565 and **Surinder Kumar v. State of Punjab** 2006(2) RCR (Criminal) 359.

Mr. Chaudhary then submits that the impugned order deserves to be set aside inasmuch as it does not disclose which particular offence has been committed by the petitioners. Order of summoning has been passed at the back of the persons and therefore, they have a right to know the

offences for which they have been summoned. The learned trial court has simply observed that the petitioners be also summoned to face the trial through non-bailable warrants. This according to the learned counsel is a serious technical flaw and, therefore, the impugned order deserves to be set aside directing the trial court to keep the chapter open for the purpose of passing fresh order judiciously.

In support of his contentions, the learned counsel relies upon a judgment of this Court rendered in **Kamaljit Kaur vs State of Punjab** 1998(1) RCC 714.

On the basis of the aforesaid submissions, Mr. Chaudhary submits that the impugned order Annexure P/1 vide which the petitioners have been summoned to face trial along with their two co-accused be set aside or in the alternative the trial court be directed to pass a fresh order judiciously

Controverting the submissions advanced by Mr. Chaudhary, Mr. Arora submits that the learned trial court has taken into account the statement of Dharminder PW4, the real brother of the deceased who is otherwise the first informant and the trial court reached to a categorical finding that it is a fit case for summoning the present petitioners to face trial. According to Mr. Arora, the order is not passed mechanically in any manner and even if learned trial court has not referred to the sections (offences) for which the petitioners are summoned to face the trial, the same

would not make any difference as ultimately the petitioners have to be charged under sections 304-B and 498-A IPC for which their co-accused are also facing trial.

According to the learned State counsel, the judgments cited by Mr. Chaudhary are distinguishable on facts and do not advance his case.

Mr. R.K. Jain adopts the arguments advanced by Mr. Arora.

I have gone through the allegations as contained in the First Information Report Annexure P/4. Dharminder the real brother of the deceased has not specifically stated that the present petitioners had made any demand from the complainant side. Admittedly Sumitra had married to Bhupinder in May, 1993. She died an un-natural death in October, 1999 i.e. after more than six years of her marriage. She was also having three children as is clear from the contents of First Information Report itself. In the concluding lines of the FIR, Dharminder no doubt states that the legal action be taken against the present petitioners also. In the thorough investigation, the present petitioners were found to be innocent.

No doubt in his substantive statement, Dharminder stated (examination-in-chief) that the petitioners had started humiliating and torturing his sister for not bringing sufficient dowry. He also stated that Shanti Devi petitioner had asked to bring refrigerator and Bhupinder has desired Black and White and colour TV, wrist watch and a gas connection. He further stated that Harish petitioner demanded a scooter. Sheela

petitioner had also asked for colour TV. In his cross-examination, he admits that certain material facts were not mentioned in his initial statement Ex. PE. He was also confronted qua the present petitioners with regard to demand of dowry and harassment. He was also confronted on other material aspects as well. Before the cross-examination could conclude, an application under section 319 of the Code of Criminal Procedure was moved and the petitioners were summoned to face trial.

It is settled legal position that while considering an application under section 319 Cr.P.C. for summoning additional accused, the trial court is required to record a reasonable satisfaction that the evidence on record is sufficient to warrant a finding that the accused to be summoned must be arraigned along with the accused already facing trial. Reasonable satisfaction, in other words, is judicial satisfaction and the powers under section 319 Cr.P.C. are not to be exercised just of demand. In **Michael Machado's** case (supra), their Lordships of Apex Court in para 11, observed as under:-

"11. The basic requirements for invoking the above section is that it should appear to the Court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the court must

have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well as tried along with the already arraigned accused. "

**In Municipal Corporation of Delhi v. Ram Kishan Rohtagi and others, 1983 (1) SCC 1**, it was observed by their Lordships that power under section 319 Cr.P.C. conferred on the court is really an extraordinary power and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other persons against whom action has not been taken.

In **Surjit Kaur** and **Surinder Kumar'** s cases (supra), this Court while relying upon **Michael Machado's** case (supra), set aside the order of summoning of the accused observing that the impugned order did not set out any reasonable satisfaction judicial or otherwise as to why the accused sought to be summoned stood stand trial along with other accused. It was then observed that the order was passed just mechanically without recording reasons and considering the entire material on record. In both the aforesaid cases, the matter was remitted to the trial court to decide the application under section 319 Cr.P.C. afresh in accordance with law.

Coming to the facts of the case in hand, it is clear from the impugned order that the learned trial court has not adopted the judicious

approach in deciding the application and it appears that whatever was stated by Dharminder in his substantive statement was taken as a gospel truth. It appears to me that for the purpose of summoning the petitioner, the learned trial court has just referred to the application Ex. PE where the names of the petitioners are mentioned. This does not suffice the matter. In other words, it can very comfortably be said that the power under section 319 Cr.P.C. has been exercised by the learned trial court just mechanically as it was demanded by the State. This in any manner cannot be said to be the judicial satisfaction.

The learned trial court has not even taken the pain to disclose in the impugned order the offences for which the petitioners were summoned. This again speaks volumes of non-application of mind and therefore, in my considered view, the matter needs re-examination once again from legal as well as factual aspect of the matter.

It goes without saying that even if an application under section 319 Cr.P.C. is dismissed at one stage, there is no bar in considering the same issue once again on the basis of the subsequent sufficient evidence brought before the court during the trial. That aspect can also be considered in this very case.

Taking the case from any angle, the impugned order deserves to be set aside.

As a sequel to the aforesaid discussion, the net result now



surfaces is that the instant revision petition is allowed, the impugned order dated 30.10.2000 is hereby set aside and the matter is remitted to the trial court to decide the application under section 319 Cr.P.C. afresh in accordance with law at this stage or at any subsequent stage, as the trial court deems to be appropriate.

Since the proceedings were stayed by this Court, the parties through their counsel, are directed to appear before the trial court on 30.4.2007.

Copy of the judgment be sent to the Court concerned without any delay.

**March 30, 2007**  
**'dalbir'**

**( Virender Singh )**  
**Judge**