

Present: Shri Jagjit Singh, APP for the State.
Accused on bail with Shri AS Mavi, Adv.,

Heard on application under Section 319 Cr.PC for summoning and prosecuting Seema wife of Mohd. Hafiz as additional accused in the present case. It is submitted in the application that complainant Kiran Parveen has specifically mentioned in evidence about the role played by the accused Seema for demanding the dowry and beaten the complainant in connivance with other accused but the police did not challan the accused Seema. The complainant while appearing as PW1 again reiterated his stand as mentioned by her in the application moved to SSP, Sangrur and specifically deposed about the role played by accused Seema wife of Mohd. Hafiz for demanding the dowry and had beaten them in connivance with other accused and lastly prayed for allowing the present application.

I have heard the learned APP for the State and learned Defence counsel. The present FIR has been registered under Section 498-A and 406 of IPC. I have perused the statement of complainant Kiran Parveen and perusal of the same reveals that the the complainant has not specifically named Seema wife of Mohd. Hafiz anywhere in the statement. Further more, the FIR was also registered against the accused Mohd. Aarif only. From the perusal of statement of complainant dated 18/1/2019, it reveals that the matter was compromised between the parties and complainant had withdrawn her complaint against the accused persons. After conducting thorough investigation by the police, the FIR was registered against the accused Mohd. Aarif only. The complainant had mentioned the name of Seema in the applications moved before the SSP, Sangrur but when Seema wife Mohd. Hafiz was not found guilty, the present case was registered against the husband of the complainant only.

Heard. Section 319 Cr.PC is extracted below :

"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 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 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 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."

Section 319(1) Cr.P.C. empowers the court to proceed against other persons who appear to be guilty of offence, though not an accused before the court.

The word "appear" means "clear to the comprehension", or a phrase near to, if not synonymous with "proved". It imparts a lesser degree of probability than proof.

In Pyare Lal Bhargava v. The State of Rajasthan, AIR 1963 SC 1094, Hon'ble Supreme Court was concerned with the meaning of the word 'appear'. The court held that the appropriate meaning of the word 'appears' is 'seems'. It imports a lesser degree of probability than proof. In Ram Singh & Ors. v. Ram Niwas & Anr., 2009(3) R.C.R. (Criminal) 501 : 2009(4) Recent Apex Judgments (R.A.J.) 261 : (2009)14 SCC 25, Hon'ble Supreme Court was again required to examine the importance of the word 'appear' as appearing in the Section. The Court held that for the fulfillment of the condition that it appears to the court that a person had committed an offence, the court must satisfy itself about the existence of an exceptional circumstance enabling it to exercise an extraordinary jurisdiction. What is, therefore, necessary for the court is to arrive at a satisfaction that the evidence adduced on behalf

of the prosecution, if unrebutted, may lead to conviction of the persons sought to be added as an accused in the case.

At the time of taking cognizance, the court has to see whether a *prima facie* case is made out to proceed against the accused. Under Section 319 Cr.P.C., though the test of *prima facie* case is the same, the degree of satisfaction that is required is much stricter. The **Hon'ble Supreme Court** in **Vikas v. State of Rajasthan, 2013(4) R.C.R.(Criminal) 948 : 2013(6) Recent Apex Judgments (R.A.J.) 356 : 2013(11) SCALE 23**, held that on the objective satisfaction of the court a person may be 'arrested' or 'summoned', as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

In **Rajendra Singh vs State of UP and Anr 2007(3) R.C.R. (Criminal) 1022 : 2007(4) Recent Apex Judgments (R.A.J.) 305** the **Hon'ble Supreme Court** observed :

"Be it noted, the court need not be satisfied that he has committed an offence. It need only appear to it that he has committed an offence. In other words, from the evidence it need only appear to it that someone else has committed an offence, to exercise jurisdiction under Section 319 of the Code. **Even then, it has a discretion not to proceed, since the expression used is "may" and not "shall".** The legislature apparently wanted to leave that discretion to the trial court so as to enable it to exercise its jurisdiction under this section. The expression "appears" indicates an application of mind by the court to the evidence that has come before it and then taking a decision to proceed under Section 319 of the Code or not."

The **Hon'ble Five Judges Bench of Hon'ble Supreme Court in case Hardeep Singh vs State of Punjab and others 2014(1) R.C.R.(Criminal) 623 :2014(1) Law Herald (SC) 47 :2014 CriLJ 1118** held 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." 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 court 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.

I have perused the entire record on the case file. The prosecution has moved the application under Section 319 Cr.PC for summoning Seema wife of Mohd. Hafiz as additional accused on the basis of statement of complainant. The statement of PW1 Kiran Parveen does not find any link with the investigation conducted by the investigating agency. However, during the course of entire investigation, there was nothing found on record against Seema wife of Mohd. Hafiz. The inquiries conducted by the police agency did not find any role of the mother in law as well as father in law of the complainant as accused Mohd. Aarif and the complainant had started to reside in a rented accommodation separately from the family of the accused. The allegations leveled are against the accused after their compromise. Further more, the Court at this stage has to see whether there is ample material on record to summon the above named person as additional accused. In view of this Court, the present application is without any merit and has been filed just to delay the trial. No ground is made out for summoning Seema wife of Mohd. Hafiz as additional accused. Accordingly, the present application under section 319 Cr.P.C is dismissed. Case is adjourned to 2/3/2023 for prosecution evidence. Remaining PWs be summoned for said date.

Announced in open court.
Dt.16/1/2023

Shavinder Kumar
Stenographer Gr.-II

(Roopa Dhaliwal), PCS
Sub Divisional Judicial Magistrate
Malerkotla. UID-PB0350