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*Before Rajive Bhalla, J.*

RAJBIR SINGH,—*Petitioners*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents*

*Crl. R. No. 1297 of 2005*

29th March, 2006

*Code of Criminal Procedure, 1973- S. 310-Statement before the police by father on daughter's death against son-in-law and in-laws for failure to fulfil demand of dowry—On a supplementary statement alleged to have been recorded by father exonerating in-laws and implicating his daughter's husband and two friends- Police presenting challan against husband and his friends and placing members of family of husband in Col. No. 2—Petitioner categorically denying his supplementary statement and filing application u/s 319 for summoning the accused- S.319 confers power upon a trial Court to summon the accused to stand trial alongwith the already arraigned accused—Such powers have to be exercised with a degree of caution, in exceptional circumstances and only where on the basis of the material on record, the Court is satisfied that the persons, sought to be summoned, must be arraigned as accused—Contents of FIR alongwith petitioner's deposition on oath sufficient to record a reasonable satisfaction that family members of husband actively participated in the commission of offences complained of and they should also be summoned to stand trial—Finding of trial Court while placing reliance on petitioner's unsigned supplementary statement before the police is not based upon material on record—A statement on oath would obviously stand on higher pedestal than a statement made before the police—Order passed by trial Court dismissing application u/s 319 suffers from an error of jurisdiction and reveals a miscarriage of justice and is inherently illegal—Petition allowed.*

*Held*, that revisional jurisdiction statutorily conferred by Section 401 of the Cr.P.C. limits judicial scrutiny to examine impugned orders for errors of jurisdiction of such perversities of illegalities as have led to a miscarriage of justice. Section 319 of the Cr.P.C. confers powers upon a trial Court to summon an accused to

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stand trial alongwith the already arraigned accused. The object of Section 319 of the Cr.P.C. is to ensure that an offender does not escape the consequences of his misdeeds. These powers have to be exercised with a degree of caution, in exceptional circumstances and only where on the basis of the material on record, the Court is satisfied that the persons, sought to be summoned, must be arraigned as accused. This "reasonable satisfaction" to be based upon the material on record, must be discernible from the process of reasoning leading to an order summoning the accused.

(Para 10)

*Further held*, that specific allegations have been levelled against respondents No. 2 to 5 with respect to cruelty and harassment. There are specific allegations with respect to demand of money, a cooler, a fridge, a motor-cycle and a washing machine. The statement specifically states that the petitioner's daughter was done to death by the accused on account of demand of dowry. A perusal of the petitioner's cross-examination reveals that the supplementary statement, was put to the petitioner, whereupon he replied that he had made no such statement. The contents of FIR, when read alongwith the petitioner's deposition as PW1, are sufficient to enable this Court to record a reasonable satisfaction that respondents No. 2 to 5 actively participated in the commission of offences complained of and, therefore, should be summoned to stand trial alongwith the already arraigned accused. The finding returned by the trial Court that despite the material on record, respondents No. 2 to 5 cannot be summoned, merely on the ground of doubt, is not based upon the material on record but rather upon a perverse consideration of the statements. While dismissing the application under section 319 of the Cr.P.C. the trial Court placed primary reliance upon the petitioner's unsigned supplementary statement, made to the police, exonerating respondents No. 2 to 5 of any wrong doing. While noticing the petitioner's first statement to the police implicating respondents No. 2 to 5, as also his deposition of oath, as PW1, no reasons, whatsoever, have been assigned for discarding these two significant statements.

(Para 12)

Further held, that while considering an application under section 319 of the Cr.P.C., a Court is required to record a reasonable satisfaction i.e. a judicial satisfaction, on the basis of the entire material

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on record. A statement on oath would obviously stand on higher pedestal than a statement, made before the police and, therefore, should have been assigned due primacy especially when the supplementary statement was denied by the petitioner, during his deposition on oath.

(Para 13)

*Further held*, that another ground that led the trial Court to dismiss the application was that respondents No. 2 to 5, who are relatives of the husband, were residing separately and, therefore, they could not have committed the offences, complained of. Such sweeping and general enunciations of law with respect to relatives of a husband residing separately cannot be accepted. Mere separate residence of relatives of a husband, accused of the death of his wife, cannot be a circumstance in itself to exonerate the relatives. Each case must be determined on its own peculiar set of facts and, therefore, the general observations, made by the trial Court were unwarranted.

(Para 14)

Ashit Malik, Advocate, *for the petitioner.*

J. S. Toor, Addl. A. G. Haryana, *for respondent No. 1.*

Rahul Rathore, Advocate for V. S. Rathore, Advocate *for respondents 3 to 5.*

## JUDGEMENT

**RAJIVE BHALLA, J.**

(1) By way of the present revision petition, the petitioner impugns the order dated 8th July, 2005, whereby the Additional Sessions Judge, Karnal dismissed an application, filed under Section 319 of the Cr.P.C. praying that the private respondents, be summoned to stand trial.

(2) The petitioner's daughter Geeta was married to one Jatinder. On 8th April, 2004, the petitioner received a telephonic communication that his daughter and her husband had fallen into a canal, while riding a motorcycle and though Jatinder had survived, Geeta's whereabouts were unknown. The petitioner recorded a statement dated 9th April 2004, before the police, stating therein that

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his daughter had been done to death for failure to meet the demands of dowry. It was alleged that his daughter's husband Jatinder, mother-in-law Kamlesh, father-in-law Sarnam Singh, Sonu son of Sarnam Singh, Komal wife of Sonu were dis-satisfied with the dowry. Soon after her marriage, his daughter had disclosed, to the petitioner, that the aforementioned individuals harassed her for not bringing a buffalo. After a few days, the petitioner arranged a sum of Rs. 20,000 for the purchase of a buffalo and handed over the same to his daughter's father-in-law. A month later, the in-laws (respondents No. 2 to 5) began beating and harassing his daughter so as to coerce her into bringing a cooler, a fridge and a motor cycle. As he could not fulfill these demands, the petitioner brought his daughter back. She stayed with him till 3rd March, 2004. Thereafter, at the intervention of a Panchayat, Geeta was returned to her matrimonial home. A fortnight thereafter, the beating and harassment commenced and a demand was raised for a television. These, in brief, are the facts in the petitioner's first statement to the police.

(3) Thereafter, the petitioner is alleged to have recorded a supplementary statement, before the police, stating therein that his deceased daughter had misled him regarding the allegations of dowry. She had informed him that her husband wanted to kill her from the very beginning. He further stated that Sarnam Singh, Smt. Kamlesh, Smt. Komal and Sonu (respondents No. 2 to 5) had no role to play in Geeta's death. After investigation, a challan was filed, and the husband and two of his friends arraigned as accused. Respondents No. 2 to 5 were placed in column No. 2.

(4) Charges, under Sections 302/120-B/34 of the IPC, were framed against the accused. The petitioner appeared as a witness on 17th September, 2004 and deposed that his daughter was done to death, for failure to fulfill the demands of dowry. She was harassed and treated with cruelty by her husband Jatinder and respondents No. 2 to 5. In essence, he repeated that allegations, levelled by him, in his first statement, dated 9th April, 2004. During cross-examination, he was confronted with his subsequent statement, dated 12th April, 2004, i.e. the supplementary statement exonerating respondents No. 2 to 5 and implicating Geeta's husband and his friends for the murder. He dis-owned the statement and categorically asserted that he had never made any such statement.

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(5) The petitioner thereafter filed an application, under Section 319 of the Cr.P.C. praying therein that respondents No. 2 to 5 be summoned to stand trial, alongwith the already arraigned accused. *Vide* order dated 8th July, 2005, the trial Court dismissed the application.

(6) Counsel for the petitioner contends that the trial Court was not justified in dismissing the application, filed under Section 319 of the Cr.P.C. The trial Court committed a serious error in discarding the petitioner's deposition on oath, as a prosecution witness and relying upon an alleged unsigned supplementary statement, dated 12th April, 2004 made before the police. It is further contended that the trial Court could not have placed reliance upon the alleged supplementary statement, as during cross-examination, the petitioner had specifically denied ever having made such a statement. The learned trial Court also ignored the petitioner's original statement, made before the police. It is contended that a perusal of the initial statement, made before the police and the deposition on oath, before the trial Court, would lead to a conclusion that respondents No. 2 to 5 had indeed committed offences and, therefore, should have been summoned. It is further contended that the fact that respondents No. 2 to 5, are relatives of the husband, would not, in the absence of any other circumstance, in their favour lead to an inference of false implication.

(7) Counsel for respondents No.2 to 5, on the other hand, contends that the respondents are relatives of the husband, residing separately. They are sought to be prosecuted for their close relationship with the husband. The petitioner's supplementary statement, exonerated them of any wrong doing and implicated the deceased's husband and his friends and, thus, as no case was made out against them, the trial Court rightly dismissed the application. The trial Court, in the exercise of discretion, under Section 319 Cr.P.C, did not commit any illegality while examining the material on record, namely, the petitioner's statements, before the police, and his deposition, before the Court and thereon arriving at a conclusion that respondents No. 2 to 5 had not committed any offence. It is further argued that as the trial Court has not committed an error of jurisdiction and the impugned order does not suffer from any illegality, the revision petition be dismissed.

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(8) Counsel for the State of Haryana contends that the petitioner voluntarily made a supplementary statement before the police exonerating respondents No. 2 to 5. The investigation conducted found Jatinder, the deceased's husband, and his co-accused *prima facie* liable. As the petitioner himself exonerated respondents No. 2 to 5, the impugned order does not suffer from any illegality as would warrant interference by this Court, in the exercise of its revisional jurisdiction.

(9) I have heard learned Counsel for the parties and perused the record.

(10) Revisional jurisdiction statutorily conferred by Section 401 of the Cr.P.C. limits judicial scrutiny to examine impugned orders for errors of jurisdiction or such perversities or illegalities as have led to a miscarriage of justice. Section 319 of the Cr.P.C. confers power upon a trial Court to summon an accused to stand trial alongwith the already arraigned accused. The object of Section 319 of the Cr.P.C. is to ensure that an offender does not escape the consequences of his misdeeds. These powers have to be exercised with a degree of caution, in exceptional circumstances and only where on the basis of the material on record, the Court is satisfied that the persons, sought to be summoned, must be arraigned as accused. This "reasonable satisfaction" to be based upon the material on record, must be discernible from the process of reasoning leading to an order summoning the accused.

(11) The material, placed before the trial Court, while considering the application, filed under Section 319 of the Cr.P.C. were the report, filed under Section 173 of the Cr.P.C. and the petitioner's deposition on oath, while appearing as PW1, before it. The petitioner deposed on oath, as PW1 that respondents No. 2 to 5 had raised demands of dowry, harassed and beat his daughter, since deceased. This deposition was in consonance with the petitioner's first statement before the police. The petitioner's statement on oath, annexed as Annexure P-3, with the present petition, reads as follows :—

"Ms. Geeta since deceased was my daughter. I had solemnized the marriage of my daughter Geeta with Jitender accused present in the court today on 9th March, 2003 of village Kurak as per Hindu rites and ceremonies. In the marriage

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of my daughter I had given dowry beyond my capacity but accused Jitender, his father Sarnam Singh, his mother Kamlesh, his brother Sonu and his sister-in-law (wife of Sonu) were not happy and satisfied with the dowry. Sarnam Singh and Kamlesh both alongwith Sonu and Komal are present in the court today. My daughter Geeta was sent as gona after 3-4 months of the marriage of her matrimonial home. My daughter Geeta informed me on telephone that her husband, her mother-in-law, father-in-law her jaith Sonu and jethani Komal had been subjecting her to cruelty and harassment for demanding a she buffalo. On receipt of the telephone from Geeta I went to the house of her-in-laws where Sarnam Singh, Komal, Kamlesh, Sonu and Jitender again raised the demand of she buffalo before me. Geeta my daughter also met me there and told me that aforesaid persons were harassing and subjecting her to cruelty on account of demand of she buffalo. I made the accused person to understand. Thereafter, I again visited the matrimonial home of my daughter and paid Rs. 20,000 to Sarnam Singh in the presence of the other accused persons. After one month of making payment of Rs. 20,000 to the accused person I brought my daughter Geeta to my house. My daughter Geeta told her mother and me that aforesaid accused persons had again started harassing her for bringing cooler, fridge, motorcycle and washing machine. She had also told us that accused persons used to give her beatings for not bringing the aforesaid articles. On 3rd March, 2004 Jagram alongwith 4-5 persons came to my village Pipal Shaw to bring Geeta back to the matrimonial house in village Kurak. Jagram assured me that Geeta would be kept properly in her matrimonial home by the accused persons and the aforesaid incident would not be repeated. On 4th March, 2004 I sent my Geeta with Jagmal etc. Arun brother of Geeta also used to visit his sister to her matrimonial home. Geeta also vomited her misery before his brother Arun that accused person's used to beat her and harass her for bringing the aforesaid articles of dowry. Arun had visited the house of Geeta after

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Panchayat i.e. dated 4th March, 2004. On 8th March, 2004 I received telephonic message to the effect that Jatinder and Geeta had fallen in the canal alongwith motor cycle while coming back from Karnal to his village and that Jatinder managed to save himself from drowning while motor-cycle and Geeta were not traceable. Sarnam Singh had informed me about the aforesaid incident on telephone. I alongwith my brother Raj Pal Singh, nephew Sanjiv and other persons came to Kachhwa ghat (bridge) where police met me. I made my statement to the police which was reduced into writing. My statement is Ex.PA, it bears my signature at point 'A'. Statement Ex.PA was read over to me and I had signed at point 'A' in token of its correctness. My daughter Geeta was done to death by the accused persons on account of demand of dowry.

Xxxx by Shri B. S. Rathore, Adv. for accused Jitender.

I had received a telephonic message at about 9.15 P.M. on 8th April, 2004. I had stated before the police in my statement that Sarnam Singh had telephonically informed me about the incident (confronted with statement Ex.PA where the name of Sarnam Singh is not mentioned). I reached Kachhawa bridge at about 11.00 p.m. on 8th April, 2004. There was police officials present near the bridge and there was no person from village Kurak. 1-2 persons from the nearby village were definitely present there. Police was searching for Geeta and motor-cycle. I might have told to the police present over there about my identity. The police had recorded my statement there at Kachhaw bridge after two hours of reaching there. Police had recorded my statement by sitting in the vehicle. The divers were searching the Geeta and motor-cycle in that canal. The drivers did not belongs to police deptt. They were 5-6 in numbers. I do not know whether Sarnam Singh is heart patient or not. It is correct that Kamlesh, wife of Sarnam Singh is suffering disease of cancer and is undergoing treatment from P.G.I., Chandigarh. Police had recorded my second statement as well but I cannot tell the date of recording statement. I did not make any statement before



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the police on 12th April, 2004 that I disowned my earlier statement (confronted with portion A to A of Ex.DA where it is so recorded). Kanwar Pal, PW is son of my sister-in-law (Sali ka ladka). He is residing at Karnal for the last more than ten years. Arun Kumar PW is my son. My son Arun Kumar was very much aware about the demand of dowry by the accused persons as this fact had been narrated to him by Geeta herself, Kanwar Pal PW was not aware of fact regarding demand of dowry articles i.e. motor-cycle fridge, she buffalo etc. I did not visit village Kurak on 8th April 2004 and we remained near Kychhaw bridge only. I did not state in my statement that I had received a telephonic message that Geeta and Jatinder had met with an accident while going on motor-cycle near the bridge of Kuchha canal (confronted statement Ex.DA wherein it is so recorded). I had not stated in my statement before the police that Kanwal Pal, PW had told on 10th April, 2004 that Jitender and others were conspiring together to commit murder of my daughter (confronted with Ex.DA, where it is so recorded). I did not state before the police that my daughter Geeta had been misstating the facts regarding demand of dowry in fact there was some other cause of torture (confronted with statement Ex.DA where it is so recorded). I did not state before the police that my daughter Geeta had been misstating the fact that she had been subjected to torture on account of demand of dowry. (confronted with statement Ex.DA where it is so recorded). I did not state to the police in my statement that Sarnam Singh, Kamlesh, Sonu and Komal had no role to play in causing death of Geeta. (confronted with statement Ex.DA where it is so recorded). It is correct that I have stated before the police that it was a case of murder. My daughter was killed because of her failure to fulfil the demand of dowry. (Further cross-examination deferred as an application u/s 319 Cr.P.C has been moved).”

(12) A perusal of the statement, reproduced above, reveals that specific allegations have been levelled against respondents No. 2 to 5 with respect to cruelty and harassment. There are specific allegations with respect to demand of money, a cooler, a fridge, a

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motor-cycle and a washing machine. The statement specifically states that the petitioner's daughter was done to death by the accused on account of demand of dowry. A perusal of the petitioner's cross-examination reveals that the supplementary statement, Ex.DA, was put to the petitioner, whereupon he replied that he had made no such statement. In my considered opinion, the contents of the FIR, when read alongwith the petitioner's deposition as PW1, are sufficient to enable this Court to record a reasonable satisfaction that respondents No. 2 to 5 actively participated in the commission of offences complained of and, therefore, should be summoned to stand trial alongwith the already arraigned accused. The finding, returned by the trial Court, that despite the material on record, respondents No. 2 to 5 cannot be summoned, merely on the ground of doubt, is not based upon the material on record but rather upon a perverse consideration of the statements, referred to hereinbefore. While dismissing the application, under Section 319 of the Cr.P.C, the trial Court placed primary reliance upon the petitioner's unsigned supplementary statement, made to the police, exonerating respondents No. 2 to 5 of any wrong doing. While noticing the petitioner's first statement to the police implicating respondents No. 2 to 5, as also his deposition on oath, as PW1, no reasons, whatsoever, have been assigned for discarding these two significant statements.

(13) As noticed herein before, while considering an application, under Section 319 of the Cr.P.C, a Court is required to record a reasonable satisfaction i.e. a judicial satisfaction, on the basis of the entire material on record. A statement on oath would obviously stand on higher pedestal than a statement, made before the police and, therefore, should have been assigned due primacy especially when the supplementary statement was denied by the petitioner, during his deposition on oath.

(14) Another ground that led the trial Court to dismiss the application was that respondents No. 2 to 5, who are relatives of the husband, were residing separately and, therefore, they could not have committed the offences, complained of. Such sweeping and general enunciations of law with respect to relatives of a husband residing separately cannot be accepted. Mere separate residence of relatives of a husband, accused of the death of his wife, cannot be a circumstance in itself to exonerate the relatives. Each case must be determined on

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its own peculiar set of facts and, therefore, the general observations, made by the trial Court, were unwarranted.

(15) In view of what has been stated above, I am satisfied that the impugned order suffers from an error of jurisdiction and reveals a miscarriage of justice and is, thus, inherently illegal.

(16) In view of what has been stated above, the petition is allowed, the order dated 8th July, 2005, passed by the Additional Sessions Judge, Karnal is set aside, and respondents No. 3 to 5 are directed to be summoned to stand trial with the already arraigned accused. The trial Court shall, upon receipt of a certified copy of this order, summon respondents No. 3 to 5 and thereafter proceed, in accordance with law. Since respondent No. 2 has passed away, she cannot be summoned.

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**R.N.R.**

*Before H.S. Bedi, A.C.J. and Ajay Kumar Mittal, J.*

TARUN BHANDARI,—*Petitioner*

*versus*

STATE OF HARYANA AND OTHERS,—*Respondents*

*Civil Writ Petition No. 2558 of 2006*

21st April, 2006

*Haryana Municipal Act, 1973—Sections 21, 252(2) and 253—Haryana Municipal Election Rules, 1978—Rl. 72-A—No confidence motion against President of M.C. moved—13 out of 17 Councillors wanted to withdraw in writing 'No confidence motion' in the meeting—No Provision for withdrawal of 'no confidence motion' after a meeting has been convened—Rule 72A(1) provides that a motion of no confidence may be withdrawn at any time before the meeting is convened—'No confidence motion' moved against petitioner failed because once the meeting for considering the same has been convened and started it could not have been withdrawn—Under Rule 72A(3) of 1978 Rules no meeting for no-confidence motion shall be convened unless a period of six months has elapsed since the date of last meeting convened for this purpose—Second no-confidence motion passed against the*