

Court No. - 50

Case :- CRIMINAL REVISION No. - 1330 of 2023

Revisionist :- Renu Devi

Opposite Party :- State Of U.P. And 5 Others

Counsel for Revisionist :- Viveka Nand Rai

Counsel for Opposite Party :- G.A.,Kuldeep Singh Chahar

Hon'ble Ram Manohar Narayan Mishra,J.

1. Heard learned counsel for the revisionist, learned counsel for the opposite party Nos.2 to 6, Sri Virendra Nath Upadhyay, learned AGA for the State and perused the material placed on record.

2. Instant criminal revision has been preferred against the impugned order dated 8.2.2023, passed by Additional Session Judge/F.T.C., Court No.1, Mathura, in Session Trial No.1758 of 2021 (State vs. Deshraj @ Daroga), arising out of Case Crime No.226 of 2021, under Section 376 IPC, Police Station Baldev, District Mathura. By the impugned order, learned court below has rejected the application under Section 319 Cr.P.C. of the revisionist/prosecutrix wherein a prayer was made to summon the remaining accused persons named in FIR, who were not chargesheeted by the police to face trial together with accused Deshraj, who is already facing trial.

3. The factual matrix of the case in brief are that the revisionist, who is first informant in the case lodged an FIR at police station Baldev, District Mathura, on 30.7.2021 with averment that she is a widow lady. She is resident of Village Karnau, Police Station Baldev, District Mathura. She is

having two children out of her wedlock with her deceased husband. Her husband died three years ago to the incident. She came in contact with accused Deshraj, after death of her husband, who gave her an assurance that he would marry her and also provide care and protection to her children, as their guardian. On that pretext, she took her to his village Sailkheda, Police Station Baldev. The family members of Deshraj namely Jagdish, Smt. Indravati, Laxman, Jolly and Bhola were also hand in glove with accused Deshraj and they also took her to their home alongwith Deshraj. All the accused persons assured her that she will be soon married with Deshraj and she started living at the place of accused persons as she repost faith on their assurance. Deshraj began to establish relationship with her against her will at his place on the pretext of solemnizing marriage with her. Two years ago, she was sent to Mathura alongwith her children under conspiracy hatched by accused persons. Accused Deshraj used to commit rape on her at Mathura also on the pretext of marriage and when she lodged protest to this, he would say that if she reported the matter, he would not marry her. She got pregnant for two months due to illicit relationship established by accused Deshraj, then all the accused persons got her pregnancy aborted against her will. Deshraj ultimately refused to marry her and she was compelled to come back to her home. The accused persons had confined her at her place for many days. The police investigated the case and submitted chargesheet against accused Deshraj only under Section 376 IPC. The complicity of other named accused persons were not

found in the offence and their name were dropped during investigation and they were not chargesheeted. On commencement of trial, the accused Deshraj was charged under Section 376 IPC and during evidence statement of PW-1, the prosecutrix was recorded by the trial court, in which she made allegations against Deshraj and also stated that all the accused persons acting under conspiracy took her to their place at Village Sailkheda to provide her protection and also gave her assurance that they would solemnize her marriage with Deshraj and taking advantage of this situation, Deshraj used to establish physical relations with her against her will. Subsequently, she was shifted to Mathura where Deshraj also established physical relations. Deshraj got her pregnancy aborted. It is also stated in cross-examination that she used to take milk from Deshraj for around two years at the rate of 250 grams per day, as this would cater her needs. She used to work in the houses to clean utensils and floor to earn her livelihood. She had stayed for 10 to 15 days at Sailkheda and thereafter she was shifted to Mathura. Deshraj married with some other woman, whose particulars are not known to her. When Deshraj left Mathura, then altercation began between Deshraj and her. She did not relish marriage of Deshraj. In cross-examination, she stated that so long, she stayed with accused persons, she stayed there happily and if the accused persons would keep her with them she would not lodged complaint.

4. Learned counsel for the revisionist submitted that the accused persons who are sought to be summoned under

Section 319 Cr.P.C. are named in FIR. They are immediate family members of main accused Deshraj. They have also given her assurance that they would solemnize marriage of the prosecutrix with Deshraj and placing trust on their assurance, she came to the place of accused persons where Deshraj taken to establish physical relationship with her on the pretext of marriage and she was sexually exploited by Deshraj. Proposed accused persons were also hand in glove with Deshraj. The prosecutrix has given ample evidence against the proposed accused persons sought to be summoned under Section 319 Cr.P.C. as they had shared common intention with Deshraj to keep the prosecutrix in confinement, where Deshraj committed rape on her for several times on the pretext of marriage. Learned court below has rejected the application under Section 319 Cr.P.C. without considering the evidence of PW-2 in proper perspective. There is strong, prima facie, case to summon the accused persons in the offence, so that they could be tried alongwith the accused Deshraj.

5. Learned counsel for the respondent Nos.2 to 6 as well as learned AGA submitted that victim in her statement under Section 164 Cr.P.C. has levelled allegations regarding commission of rape and sexual exploitation against accused Deshraj, however, in sworn testimony before the court, she has levelled certain allegations against other named accused persons, who are not chargesheeted. Therefore, there is inconsistency in the version of the prosecutrix in her statements recorded under Sections 164 Cr.P.C. as well as in

her sworn testimony recorded before the court below during trial of accused Deshraj. They also submitted that learned trial court has rejected the application of the revisionist under Section 319 Cr.P.C. by assigning cogent reasons and there is no, prima facie, case against the accused persons in question, who are sought to be summoned in application under Section 319 Cr.P.C.

6. The allegations of sexual assault on the pretext of marriage are specifically levelled against accused Deshraj. The allegations against other persons are that they assure the prosecutrix to get her married and placing reliance on it, she visited the place of accused persons where she stayed with them for some time and during her stay accused Deshraj committed rape on her and thereafter, she was shifted to Mathura, where Deshraj used to establish physical relationship with her.

7. Hon'ble Apex Court in **Criminal Appeal No.1750 of 2008, Hardeep Singh vs State Of Punjab & Ors, (2014) 3 SCC 92** held as under:-

"98. 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 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.

99. 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 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." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under [Section 319 Cr.P.C.](#) to form any opinion as to the guilt of the accused."

8. Considering the rival submissions made by learned counsel for the parties, totality of facts and circumstances of the case and perusing the impugned order in the light of judgement of Hon'ble Apex Court in Hardeep Singh's case (*supra*), I find no strong, prima facie case against the accused persons in question who are sought to be summoned under Section 319 Cr.P.C. There is no illegality, irregularity or perversity in the impugned order and the revision is liable to be dismissed.

9. Accordingly, present criminal revision stands **dismissed**.

Order Date :- 17.10.2023

Kamarjahan