

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

CRR No.2861 of 2015

Date of Decision: 18.08.2015

Ashok and another

....Petitioners

Versus

State of Haryana

....Respondent

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. J.S. Mehndiratta, Advocate
for the petitioners.

Mr. Baljinder S. Virk, D.A.G., Haryana
for the respondent-State.

DAYA CHAUDHARY, J.

The present revision petition has been filed by the petitioners for setting aside order dated 13.07.2015 passed by the Additional Sessions Judge, Rohtak, whereby, the petitioners have been summoned to face trial as an additional accused in case FIR No.32 dated 06.02.2012 registered under Sections 363, 366-A and 376 of Indian Penal Code.

The said FIR was registered on the basis of statement made by Som Lata, the mother of the prosecutrix. As per allegations in the FIR, the daughter of the complainant went to school but did not return. She further stated that accused-Ajay, who was living in the neighbourhood, was also not seen after the said date and there was a suspicion that he had allured her minor daughter to accompany him to some unknown place. The

mother of the prosecutrix named the present petitioners in the complaint, on the basis of which, the FIR was registered. Initially, the FIR was registered under Sections 363 and 366-A IPC but thereafter, the offence under Section 376 of the Indian Penal Code was also added after recording the statement of the prosecutrix under Section 164 Cr.P.C. Although, in the initial statement of the prosecutrix, it was mentioned that she herself went with the accused persons but subsequently, in another statement, she named the accused persons by stating that she was subjected to rape by accused Ajay and while staying at Delhi, the main accused was in constant touch with his mother and maternal uncles and they made arrangements for him. It was also stated that the present petitioners went to Delhi to meet them and got her marriage performed with Ajay. Thereafter, they threatened the prosecutrix to make a statement in favour of Ajay. The case was investigated by the police. The petitioners were working as Court Clerks/Ahlmads and their call details were also obtained by the police during investigation. The challan was presented under Section 173 Cr.P.C in the Court of Judicial Magistrate Ist Class, Rohtak on 26.04.2012. The petitioners were declared innocent by the police and were kept in column No.2 of the challan. Thereafter, the case was committed to the Court of Sessions and the charges were framed against accused Raj Bala and Ajay. Charges were also framed against Ajay under Sections 366-A and 376 IPC. Som Lata, complainant appeared as PW1 and her husband Narender Singh as PW-2. The prosecutrix appeared as PW-14. The application was moved by the complainant under Section 319 Cr.P.C for summoning the petitioners to face trial as an additional accused. The said application was allowed on 13.07.2015 by the Additional Sessions Judge, Rohtak and the petitioners were ordered to face trial as an additional accused.

Learned counsel for the petitioners submits that the summoning order has been challenged, by filing the present petition, on the ground that the petitioners were found innocent during investigation but subsequently, they have been summoned to face trial. Learned counsel also submits that the evidence led by the prosecution was not sufficient to make out a *prima facie* case against the petitioners and they have been summoned only on the basis of the statement of the prosecutrix, which was an afterthought.

It is also the argument of learned counsel for the petitioners that the power under Section 319 Cr.P.C is discretionary and extra ordinary, which is to be exercised sparingly but in the present case, neither any sufficient evidence is there to summon the petitioners as an additional accused nor the satisfaction of the Court has been recorded to arrive at a conclusion that the petitioners have to face trial along with other accused on the basis of material on record. The prosecutrix, in her statement, has stated that she went with the main accused at her own will and has solemnized marriage with him.

Learned counsel for the respondent-State submits that the order of summoning is well reasoned and is based on the statement of the complainant, the prosecutrix and her father. In the initial statement, the prosecutrix was under pressure of the accused persons and her marriage was managed with the main accused, whereas, she was 16 years of age and even her consent was immaterial.

Learned counsel for the respondent-State submits that as per judgment of Hon'ble the Apex Court in ***Hardeep Singh vs State of Punjab 2014(3) SCC 92***, an extra ordinary power is to be exercised in case a strong and cogent evidence is there against the accused person.

Heard the arguments of learned counsel for the parties and

have also perused the summoning order and other documents available on record as well as FIR and the statement of the prosecutrix.

Section 319 of the Cr.P.C., which is relevant for decision of the case, is reproduced as under :-

“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 together 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 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.”

A perusal of the provisions of Section 319 Cr.P.C, shows that this power can be exercised by the Court, if the Court is satisfied that any person other than the accused, who has committed an offence is also involved in the offence, can be summoned. Undisputedly, the power under Section 319 Cr.P.C is discretionary and the same is to be exercised

judicially with due care and caution and only when compelling reasons exist for taking cognizance against the person against whom action has not been taken earlier. A person, whose name is not mentioned in the FIR or a person, whose name is mentioned in the FIR but he has not been charge-sheeted or even a person, who has been discharged, can be summoned under Section 319 Cr.P.C provided from the evidence it appears that such person can be tried along with the accused already facing trial. In case of accused, who has been discharged, the requirement of Sections 300 and 398 Cr.P.C has to be complied with before he can be summoned afresh. Undoubtedly, the degree of satisfaction required under Section 319 Cr.P.C is much more higher than the *prima facie* satisfaction at the time of summoning as has been held in judgment of this Court in case **Gursewak Singh vs State of Punjab and another, CRR No.1031 of 2015**, decided on **03.07.2015**. The scope of extent of powers of Court to summon any person as an accused during course of inquiry or trial in exercise of powers under Section 319 Cr.P.C has been discussed in **Hardeep Singh's** case (supra). The legal position has been summarized in the said judgment in para Nos.98 and 99 and the same is reproduced 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."

In another judgment of Hon'ble the Apex Court in case ***Babubhai Bhimabhai Bokhiria and another vs State of Gujarat and others 2014(5) SCC 568***, the judgment of ***Hardeep Singh's*** case (supra) has further been highlighted in para No.8, which is as under :-

"8. Section 319 of the Code confers power on the trial Court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the Investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of prima facie case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher."

In view of the facts as mentioned above as well as the statement of the complainant, it is clear that the names of the present

petitioners were mentioned by stating that they were also involved in the commission of crime i.e kidnapping and rape of the prosecutrix. The statement of prosecutrix was initially recorded on 14.02.2012 before the Judicial Magistrate Ist Class, Rohtak and she did not name the accused petitioners and even exonerated accused Ajay but thereafter again her statement under Section 164 Cr.P.C was recorded on 21.02.2012, wherein, it was stated that she was under pressure of maternal uncle of accused and their counsel. The prosecutrix further stated that she was got forcibly married to Ajay by the maternal uncle and she was even threatened for giving statement in the Court in their favour, failing which, her family members will be liquidated. The prosecutrix appeared as PW-14 and has stated on oath that the maternal uncles of accused, Ashok and Dharmender (the present petitioners) arranged everything including money for the accused and they forcibly got her married to accused Ajay. Even the call details of the mobile of the accused were investigated and it was found that they were connected with the incident. The accused availed half day casual leave after lunch on 14.02.2012 when the prosecutrix was threatened and was made to give statement before the Magistrate in favour of accused persons. A casual leave was also availed from 11.02.2012 to 13.02.2012.

A specific finding has been recorded by the Summoning Court that the Court is satisfied that the proposed accused, who were sought to be summoned, have committed the alleged offences.

From the evidence available on record and the evidence collected by the prosecution, it cannot be said that there are bleak chances of conviction of the accused petitioners. From the statement of the prosecutrix as well as of the complainant, it is clear that the petitioners have actively participated in the commission of alleged crime and

accordingly, they have been summoned by the Additional Sessions Judge, Rohtak to face trial along with other accused.

Keeping in view the facts and law position as discussed above, there is no merit in the submissions made by learned counsel for the petitioners and the petition, being devoid of any merit, is hereby dismissed.

18.08.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE