

**CRR No. 2939 of 2015 (O&M)
Decided on : 13.08.2015**

Anuradha

...Petitioner

Versus

State of Haryana and Others

...Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present : Mr. Sunil K. Tandon, Advocate
 for the petitioner.

SHEKHER DHAWAN, J.

Present petition against the order dated 06.07.2015, passed by learned Additional Sessions Judge, Ambala, whereby the application under Section 319 Cr.P.C. moved by the petitioner was dismissed.

Brief facts of the case are that present petitioner had filed a complaint on 04.10.2013 against Parveen Kumar, Shiv Dayal, Jogindero Devi, Anil Kumar and Usha Devi, alleging that the petitioner was studying in Kalpana Chawla Polytechnic College, Ambala and came in contact with Parveen Kumar. Thereafter, he asked her to have physical relation with him. Petitioner refused the same and said she will have physical relation only with her husband. Parveen Kumar assured to marry her and develop physical relation. In the month of August 2011, Parveen Kumar alongwith his father, namely, Shiv Dayal and other family members hatched a criminal conspiracy to cheat the petitioner. They had gone to her village and asked her father to marry his daughter with respondent No. 2-Parveen Kumar. Later on, respondents No. 3 to 5 cheated the petitioner pretending that Parveen Kumar was unmarried. Respondent No. 2-Parveen Kumar was

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aware of the fact that he was already married and one FIR was also registered at the instance of his wife. Remaining respondents concealed the fact of first marriage and got him married to the petitioner in a deceitful manner. FIR No. 24, dated 07.03.2014, under Sections 376, 120-B of IPC at Police Station Barara was registered against five accused. However, accused-persons being influential persons never allowed proper investigation. As per statement of the petitioner, all accused were involved in commission of offence as they knew previous marriage of accused-Parveen Kumar. The petitioner moved an application for summoning of additional accused. Learned Additional Sessions Judge, Ambala, vide order dated 06.07.2015, dismissed the application.

Aggrieved by the said order, the petitioner has filed the present revision petition.

Learned counsel for the petitioner took the plea that Shiv Dayal, Jogindero Devi, Anil Kumar and Usha Devi, have been wrongly exempted by the police officials, whereas their names were mentioned in the FIR as well as statement made by the petitioner before the trial Court as PW-1. The trial Court dismissed the application while relying upon the law, which is not applicable to the facts of the present petition as per Section 319 Cr.P.C. Any person can be summoned by the Court to face trial alongwith co-accused, if the Court finds on the basis of record that they have also committed any offence. There was sufficient material on the file to summon aforesaid persons as additional accused and the learned trial Judge wrongly dismissed the application under Section 319 Cr.P.C. Hence, the said order be set aside.

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Having considered the submissions made by the learned counsel for the parties, this Court is of the considered view that learned trial Judge has already applied his mind judiciously and after appreciating the evidence available on the file, formed opinion that application under Section 319 Cr.P.C. deserves dismissal. Learned trial Judge dismissed the application mainly on the ground that even during investigation Shiv Dayal, Jogindero Devi, Anil Kumar and Usha Devi, were found innocent. Learned trial Judge has also recorded the statement of prosecutrix as PW-5, where she has stated in her cross-examination that her parents did not disclose that respondent No. 2-Parveen Kumar was already married. Similarly, PW-7-Jagir, had ruled out that Balwinder (Mediator) admitted the fact that before engagement, he had disclosed the previous marriage, job profile, matrimonial dispute with previous wife pending before the Court at Saharanpur.

Law on the point is settled that for summoning anybody as an accused, there should not only be prima facie evidence, but there must be some evidence for making out the case that the said persons should be summoned as accused because that affects materially the rights of those persons, who are being summoned as accused. Discretionary power vested in the Court is to be exercised judiciously and that has been rightly done by the learned trial Judge. The judicial discretion is with the trial Court to exercise the power under Section 319 Cr.P.C., but it is always with the rider that discretion has to be exercised judiciously. There is nothing on the file to form the opinion that the discretion was not exercised judiciously.

In view of above, present revision petition is without any merit and the same stands dismissed.

August 13, 2015

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**(SHEKHER DHAWAN)
JUDGE**