

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

CRR No. 3333 of 2015

Date of Decision:- 08.09.2015.

Meena

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present: Mr. Rahul Jain, Advocate, for the petitioner.

SHEKHER DHAWAN, J.

Present revision petition against order dated 21.07.2015 whereby application under Section 319 Cr.P.C. was dismissed by learned trial Judge.

Relevant facts of the case that FIR No.905 dated 27.09.2015 was registered on the statement of petitioner that Ashwani is friend of her brother Harikesh. On 15.09.2011, Ashwani visited her house to accompany her to Chandigarh for performing marriage. At Panipat, Ankit son of Jai Bhagwan met them. She told her brother on phone that she was going to Panipat with Ashwani for performing marriage. As per petitioner, Ashwani abducted her to Panipat for performing marriage. At Hisar bus stand, Ramesh son of Zile Singh, who is friend of Ashwani also met them. All three persons had gone to Panipat by bus. At Panipat bus stand, Ankit came

to pick up her on a bike. Ashwani and Ramesh remained at the bus stand Panipat. At Panipat, Ankit took her to Gym Khana on 3rd floor. Ankit gave her cold crink. After drinking the cold drink, she fell down unconcious and Ankit committed rape upon her. Ashwani and Ramesh also came to the Gym Khana at night. On 16.09.2014, Ramesh also committed rape upon her and on the same day she came back to Hisar by bus. At Hisar Cantonment, one Ramesh, who was earlier known to her arranged one room on rent for her. Till 19.09.2014, she remained in the said room at Hisar Cantonment. On 20.09.2014, she had gone to her house. Prosecutrix prayed that legal action be taken against Ankit, Ashwani and Ramesh.

3. During the trial, application under Section 319 Cr.P.C. was filed but that application was dismissed, vide order dated 21.07.2015. Present revision petition against the said order.

4. Learned counsel for the revisionist contended that it had come in the statement of prosecutrix under Section 164 Cr.P.C. that three persons committed rape upon her. There were specific allegations against both the private respondents but learned trial Judge did not summon the private respondents, namely, Ashwani Kumar and Ramesh. So, the present revision petition be accepted and Ashwani and Ramesh be also summoned to face trial.

5. Having considered the submissions made by learned counsel for the revisionist and the order dated 21.07.2015, passed by learned trial Judge, this Court is of the considered view that learned trial Judge rightly observed that the prosecutrix was taking entirely different version at different stages. Her version as informant on the basis of which FIR was

recorded was different and later on in the cross-examination as PW-1, she had not given any reference to the incident dated 03.07.2014. She was deposing differently at different stages while making reference to incident dated 15.09.2014. Learned trial Judge rightly formed the opinion while appreciating the evidence and material before the Court that power under Section 319 Cr.P.C. is to be exercised with greater care and caution. In the case in hand, on the basis of investigation, nothing was found against respondent Nos.2 and 3, namely, Ashwani and Ramesh. It was rightly observed by learned trial Judge that persons named in the application under Section 319 Cr.P.C. are not to be summoned merely on the asking of anybody. But the Court is to satisfy whether there is actually some material and substance for summoning of such a person as an accused. Learned trial Judge was justified in declining such a request on an application under Section 319 Cr.P.C and rightly relied upon judgments from Hon'ble Supreme Court in cases Sarojben Ashwinkumar Shah etc. Vs. State of Gujarat and others, 2011(3) R.C.R. (Criminal) 852; Ram Singh and others Vs. Ram Niwas and another, 2009(3) R.C.R. (Criminal) 501 and Babubhai Bhimbhai Bokhiria and another Vs. State of Gujarat and others, 2014(2) R.C.R. (Criminal) 915, wherein, such a law was laid down. There is absolutely no illegality, much less perversity, to set aside the impugned order, by invoking revisional jurisdiction of this Court.

6. Resultantly, the present petition stands dismissed.

September 08, 2015

naresh.k.

(SHEKHER DHAWAN)
JUDGE