

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.9373 of 2014
and
Criminal Revision No.912 of 2014

.....

Date of decision:21.2.2015

Malkiat Kaur

...Petitioner

v.

State of Punjab

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Kulbhushan Raheja, Advocate for the petitioner.

Mr. S.S. Chandumajra, Deputy Advocate General, Punjab for
the respondent-State.

.....

Inderjit Singh, J.

Cr. Misc. No.9373 of 2014:

For the reasons mentioned in the criminal miscellaneous
application, the delay of 16 days in filing the revision petition is condoned.

The criminal miscellaneous application stands disposed of.

Cr. Rev.912 of 2014:

This criminal revision petition has been filed under Section 401
Cr.P.C. against the impugned order dated 2.12.2013 passed by learned
Additional Sessions Judge, Patiala, whereby the application filed under
Section 319 Cr.P.C. by the prosecution for summoning of Malkiat Kaur and
Rimpy, has been partly allowed and Malkiat Kaur has been summoned as an

additional accused.

It is mainly stated in the grounds of revision that the order dated 2.12.2013 passed by the learned Additional Sessions Judge, Patiala, vide which the petitioner has been summoned under Section 319 Cr.P.C. for the offences under Sections 363, 366-A and 120-B IPC in Sessions case No.18T/31.7.2013/19.10.2013 is illegal, incorrect, improper and is liable to be set aside.

Notice of motion has been issued in this case.

Mr. S.S. Chandumajra, learned Deputy Advocate General, Punjab has put in appearance on behalf of the respondent-State and contested this petition.

I have heard learned counsel for the petitioner and learned Deputy Advocate General, Punjab appearing for the respondent-State and have gone through the record.

From the record, I find that the challan has already been presented against Lakhbir Kaur and Harvinder Singh for the offences under Sections 363, 366-A, 376 and 120-B IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'the POCSO Act'). An application under Section 319 Cr.P.C. has been filed by the prosecution to summon Malkiat Kaur-present petitioner and Rimpdy.

The learned Additional Sessions Judge, Patiala after going through the evidence and having heard the matter summoned Malkiat Kaur to face the trial along with other accused and dismissed the application qua Rimpdy.

The FIR in the present case has been got registered by Labh Singh by stating that he was informed by Malkiat Singh his brother that the prosecutrix had left the house at 2.00 p.m. by informing her grand-mother that she was going to the house of Malkiat Kaur. As per the FIR, the wife of the complainant went to the house of Malkiat Kaur, but she did not allow her to enter into the house and also used unwanted language. It is also the case that the complainant himself went to the house of Malkiat Kaur, but she did not allow him to enter the house and used abusive language.

A perusal of the FIR, which was recorded on the statement of Labh Singh, shows no involvement of Malkiat Kaur in the occurrence. Annexure-P.2 is the statement of the prosecutrix recorded under Section 164 Cr.P.C. I have gone through this statement. She had not named the present petitioner Malkiat Kaur in her statement. She had not even stated that she had gone to the house of Malkiat Kaur. Annexure-P.5 is her statement under Section 161 Cr.P.C. recorded by the Police in which also no role had been attributed to Malkiat Kaur nor anywhere the prosecutrix had stated that she had gone to the house of Malkiat Kaur etc. Only in the last line, the prosecutrix had stated that when she left the house, she made the excuse that she was going to the house of Malkiat Kaur. Even in the statement recorded under Section 161 Cr.P.C., the prosecutrix is not saying that she had actually gone to the house of Malkiat Kaur. Rather, as per her statement, she has only made the excuse when she left the house that she was going to the house of Malkiat Kaur. So, in view of her statements under Sections 164 and 161 Cr.P.C., no role has been attributed to Malkiat Kaur. During

investigation, she has been found innocent.

Now, in the Court, the prosecutrix has made material improvements and as per the impugned order attributed the role to Malkiat Kaur by saying that she was asked to go to her house and she was confined in that house. The statement made by the prosecutrix in the Court amounts to material improvements in her version and she is saying for the first time in the Court about the role of Malkiat Kaur in the occurrence, which is neither attributed in the FIR nor in the statements of the prosecutrix recorded under Sections 164 and 161 Cr.P.C.

Therefore, from the record, it does not appear that the present petitioner is involved in the commission of the offence. The additional accused can be summoned only when it appears to the Court from the evidence produced before it that the person so summoned is involved in the commission of the offence and he or she should face trial along with the main accused.

Therefore, from the above discussion, it nowhere appears that Malkiat Kaur is involved in the commission of the offence from material improvements made by the prosecutrix while appearing in the Court for the first time and attributing role to her which she has not attributed in her statements recorded under Sections 164 and 161 Cr.P.C.

Therefore, the impugned order passed by the learned Additional Sessions Judge, Patiala by summoning the present petitioner under Section 319 Cr.P.C. is not as per law and the same is liable to be set aside.

Finding merit in the criminal revision petition, the same is

[5]

allowed and the impugned order dated 2.12.2013 passed by the learned Additional Sessions Judge, Patiala qua summoning the petitioner is set aside.

February 21, 2015.

(Inderjit Singh)
Judge

hsp