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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No.4857 of 2015

Date of Decision: December 17, 2015.

Kamlesh Rani

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Mange Ram Sharma, Advocate
for the petitioner.

SABINA, J.

Petitioner has filed this petition challenging the order dated 16.09.2015, whereby, application moved by the prosecution under Section 319 of Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) for summoning respondent No.2 to face the trial as an additional accused, was dismissed.

Learned counsel for the petitioner has submitted that prosecutrix while appearing in the witness-box has levelled specific allegations against respondent No.2. Hence, the trial Court has erred in dismissing the application moved by the prosecution to summon respondent No.2 to face the trial as an additional accused.

Section 319 of Cr. P.C. reads as under:-

***“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 a 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."*

Thus, as per the above provision, the Court has ample power to summon a person as an additional accused to face the trial with the accused already facing trial, if there is enough material on record to proceed against the said person.

Prosecution story was set in motion on the basis of the statement of the petitioner. After completion of investigation and necessary formalities, challan was presented against accused Banti and respondent No.2 was declared innocent. During the pendency of the trial, prosecution moved an application under Section 319 Cr. P.C.

for summoning respondent No.2 to face the trial as an additional accused.

Annexure P-3 is the statement of the prosecutrix recorded during trial. A perusal of the same reveals that in her examination-in-chief, prosecutrix has levelled allegations against respondent No.2 also qua commission of offence of rape. She has stated that Puran Chand had also committed rape upon her along with his co-accused Banti. She further stated that respondent No.2 was having a pistol with him. In her cross-examination, she admitted that she had not mentioned in her complaint or affidavit or statement under Section 164 Cr. P.C. nor had stated to Deputy Superintendent of Police (DSP) that respondent No.2 had given threats to her after pointing a pistol at her. Although, the prosecutrix in her cross-examination had stated that in her complaint Exhibit P-1 and affidavit Exhibit P-2 she had stated that accused Banti had put a mobile phone on her ear and respondent No.2 had threatened her while they were travelling in the train, but she was confronted with Exhibit P-1 and Exhibit P-2, wherein, the said facts were not recorded.

The learned trial Court while dismissing the application under Section 319 Cr. P.C. for summoning respondent No.2 to face the trial as an additional accused, has noticed that prosecutrix in her application Exhibit P-1 and affidavit Exhibit P-2, had not levelled any allegation of

commission of rape upon her by respondent No.2. It has further been noticed by the trial Court that as per the statement Exhibit P-3, attested by DSP, recorded on 29.01.2015, prosecutrix had filed the complaint only against accused Banti.

From the statement of the complainant, it transpires that respondent No.2 is uncle of accused Banti. In the facts and circumstances of the present case, the learned trial Court rightly dismissed the application filed by the prosecution under Section 319 Cr. P.C. as it was probable that respondent No.2 was being sought to be summoned to face the trial as an additional accused on account of his relationship with co-accused Banti.

No ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

December 17, 2015
mahavir