

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

**Criminal Revision No.583 of 2015 (O&M)
Date of decision: 25.02.2015.**

Matlum and others

..Petitioners

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see judgment?**
- 2. To be referred to reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. Sarfraj Hussain, Advocate
for the petitioner.

Daya Chaudhary, J.

CRM-5698-2015

There is a delay of 2 days in filing this revision petition.

As per the grounds mentioned in the application, the application is allowed and delay of 2 days in filing this revision petition is condoned.

CRR-583-2015

The present revision petition has been filed to challenge the impugned order dated 12.11.2014 passed by Additional Sessions Judge, Mewat, whereby the application moved by the prosecution under Section 319 Cr.P.C. for summoning Matluf, Ajju, Salim and

Sarima has been partly allowed.

Briefly the facts of the case are that FIR No.276 dated 02.05.2013 was registered under Sections 354-A(d), 294, 509 IPC and Section 12 of POCSO Act at Police Station Nuh, District Mewat. Challan was not presented qua Matluf, Aju, Salim and Sarima as they were not found to be involved in commission of offence. Statement of Ibrahim-PW3 was recorded before the trial Court. Thereafter, an application under Section 319 Cr.P.C. was moved for summoning these persons as an additional accused, which was partly allowed as three accused, namely, Matluf, Aju and Salim were found to be involved for commission of offence and they were ordered to be summoned to face trial. The application qua Sarima was dismissed.

Petitioners, who have been summoned to face trial along with other accused, have challenged the order passed by Additional Sessions Judge, Mewat.

Learned counsel for the petitioners submits that the matter was investigated by the DSP and they were found innocent. Learned counsel for the petitioners further submits that there are material contradictions in the statements of complainant as well as of prosecutrix, which casts a doubt on the prosecution version. In the statement recorded under Section 161 Cr.P.C., the prosecutrix has alleged that the accused persons gave bad signals whereas in the statement recorded under Section 164 Cr.P.C., she has alleged that said persons caught the prosecutrix one by one. Even the names of

the persons, who reached at the place of occurrence, were not named in the statements. Learned counsel also submits that there was delay in lodging of the FIR. Learned counsel for the petitioners has also relied upon judgment of Hon'ble the Supreme Court in **Michael Machado & anr. vs. Central Bureau of Investigation & Anr., 2000 (2) RCR (Criminal) 75** as well as judgment of this Court in **Kuldip Raj Mahajan vs. Hukam Chand, 2008(1) RCR (Criminal) 370** in support of his contentions.

Heard arguments of learned counsel for the petitioner and have also perused the contents of the FIR as well as impugned order and other documents on the file.

Admittedly, the petitioners were not named in the FIR. But in the statement of prosecutrix, these persons have been specifically named and specific role has been attributed to all of them. The statement of the prosecutrix has also been corroborated by statement of PW3-Ibrahim-father of prosecutrix wherein it has specifically been stated that these persons had sexually assaulted and outraged the modesty of the victim.

As per provisions of Section 319 Cr.P.C., in case, it appears from the evidence available on record that the persons sought to be summoned, were also involved in commission of offence, then they too could be summoned along with other accused. As per statement of prosecutrix as well as her father, Sarima was not found to be involved and qua to her, the application was dismissed.

In view of the ratio of judgment in *Hardeep Singh vs. State of Punjab*, (2014)3 SCC 92, even the persons, who were kept in column No.2, can be summoned to face trial.

For summoning as an additional accused, the Court is to be satisfied that in case, sufficient evidence is there against the persons sought to be summoned along with other accused persons, they can be summoned under Section 319 Cr.P.C.

The basic requirements for invoking the powers provided under Section 319 Cr.P.C. is that it should appear to the Court from the evidence collected during trial or in the inquiry that some other person/persons were not only arraigned as an accused but they have also committed an offence for which those persons could be tried together with the accused already facing trial. Although the Court should have reasonable satisfaction from the evidence already collected regarding two aspects as to whether said persons have also committed the offence and those persons could be tried along with other accused, who are facing trial.

No doubt it is for the Court to see that sufficient material is there for summoning these persons, a discretion has been conferred on the Court, which is to be exercised only to achieve criminal justice but that judicial exercise is to be done in case, some evidence has been collected during investigation.

It has been held in various judgments that this is an extraordinary power, which is to be conferred on the Court and should

be used sparingly if compelling reasons exists for taking cognizance against those persons against whom action has not been taken.

In the present case, not only names of petitioners were mentioned in the FIR but on perusal of statement of prosecutrix as well as complainant, it is clear that their roles have also been specified.

Accordingly, on perusal of impugned order as well as evidence available on record, I am of the view that the impugned order is based on reasoning and does not require any interference by this Court. Hence, the petition being devoid of any merit is dismissed.

25.02.2015
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(DAYA CHAUDHARY)
JUDGE