

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. M-4670 of 2016

DATE OF DECISION: 28.03.2016

Mandeep Kaur

.....Petitioner

Versus

State of Punjab and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

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

Present:- Mr. R.K. Handa, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The present petition has been filed under Section 482 Cr.P.C. for quashing of order dated 4.1.2016 passed by Additional Sessions Judge, Gurdaspur in case FIR No. 33 dated 30.7.2015 registered under Sections 376,366,354-D and 506 IPC at Police Station Ghuman Kalan, District Gurdaspur, whereby, the application moved by the prosecution under Section 319 Cr.P.C. for summoning respondents No.2 and 3 as an additional accused has been dismissed.

Briefly the facts of the case are that on the basis of complaint made by the petitioner, aforesaid FIR was registered against accused-Kulwinder Singh and respondents No.2 and 3 but final report under section 173 Cr.P.C. was filed against accused-Kulwinder Singh only and respondents No.2 and 3 were declared innocent and were kept in column

No.2. The charges were framed against Kulwinder Singh only. The statement of the complainant was recorded before the trial Court and thereafter an application was moved under Section 319 Cr.P.C. for summoning respondent No.2 and 3 as an additional accused. The said application was dismissed by Additional Sessions Judge, Gurdaspur vide order dated 4.1.2016, which is subject matter of challenge in the present petition.

Learned counsel for the petitioner contends that respondents No.2 and 3 were wrongly declared innocent, whereas, there were specific allegations against them. They were also involved in the commission of offence as they facilitated the main accused to commit the offence. Not only their names were mentioned in the FIR but specific role was also attributed to them in the statement of the complainant recorded before the trial Court. There was sufficient evidence available on record to summon respondents No.2 and 3 as an additional accused to face trial. Learned counsel has also relied upon the judgment of Hon'ble the Apex Court in the case of **Hardeep Singh Vs. State of Punjab and others** 2014 (3) SCC 92, in support of his contentions.

Heard the arguments advanced by learned counsel for the petitioner and have also gone through the impugned order and other documents including copy of challan, statement of the complainant as well as the application moved under Section 319 Cr.P.C. and its reply thereto.

As per the allegations, the main accused came to the house of the prosecutrix and committed rape upon her. Respondent No.2-Harjit Kaur is mother of main accused-Kulwinder Singh and the only allegation against her is that she facilitated the main accused in commission of offence as she was present at the place of occurrence after commission of rape and threatened the complainant to kill her brother in case the fact of

rape is disclosed to any person. Respondent No.3-Piar Kaur is aunt of main accused and it has been alleged that she asked the prosecutrix to go with the accused and to roam with him. The roles of respondents No.2 and 3 were investigated by the investigating agency and they were found innocent. Subsequently the complainant while appearing before the trial Court reiterated the allegations as mentioned in the FIR.

As per the allegations levelled in the FIR, the complainant was a student of BCA in D.A.V. College, Batala and accused-Kulwinder Singh used to follow her on her way from her home to college and back. On 27.7.2015 at about 11.00 am, when the complainant was all alone in the house, accused-Kulwinder Singh came on a motorcycle and caught hold of her, put her on the bed and committed rape without her consent. It was also alleged in the FIR that after hearing her cries, respondent No.2 Hajit Kaur came to the house of the complainant and threatened her. Subsequently, respondent No.3 also gave threat to her. It is also mentioned in the FIR that in the evening, accused-Kulwinder Singh took the complainant to Metro Hotel, Batala and again rape was committed. Thereafter, the complainant was taken to the house of respondent No.3-Piar Kaur where they stayed for one day and from there the complainant managed to escape and reached her parental house.

The place of commission of offence is house of the complainant and there was no occasion of presence of respondents No.2 and 3. Subsequently the rape was committed in a Hotel, the presence of respondents No.2 and 3 is also doubtful. The role of respondents No.2 and 3 has already been investigated by the police and they were not found to be involved in the commission of crime. Even as per the allegations levelled in the FIR, respondent No.2 came at the place of occurrence after commission of rape. How respondents No.2 and 3 facilitated the main

accused to commit rape upon the victim has not been mentioned. Neither any allegations of conspiracy nor any planning has been shown to have been made by respondents No.2 and 3. Moreover both respondents No.2 and 3 are ladies and offence under Section 376 IPC is not made out against them. Respondent No.2 and respondent No.3 is mother and aunt, respectively, of main accused-Kulwinder Singh and it is not believable that the mother and aunt would ask their son/nephew to commit such a heinous crime. Main accused-Kulwinder Singh is already facing trial and there is no sufficient evidence available on record to summon said respondents.

For resolving the present controversy, Section 319 Cr.P.C is necessary to be perused, which is reproduced as under :-

“319. 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.”

As per provisions of Section 319 Cr.P.C., in case, it appears to the Court that any other person, who has not been challaned, is also involved in the commission of offence, he can be summoned and tried together with the accused, who are already facing trial. This remedy can be availed of when the Court comes to the conclusion that during an inquiry or trial, it appears to the Court that the persons sought to be summoned are also involved in the commission of offence.

In the present case, no doubt, the names of accused sought to be summoned were mentioned in the FIR but on perusal of statement of complainant-petitioner, it appears that nothing has been said to show their involvement. Their names have been mentioned but any specific role has not been assigned to them.

While exercising the power under Section 319 Cr.P.C., it is to be seen by the Summoning Court as to what role has been played by the person, who is sought to be summoned, whether said person is also involved and has not been challaned. Power under Section 319 Cr.P.C is an extraordinary power, which is to be used sparingly, only if, compelling reasons are there. Only on the basis of vague and general allegations or on recording casual statement of the witnesses, such person can't be called for. The Court is to arrive at a conclusion/satisfaction that the evidence adduced on behalf of the prosecution, if goes un-rebutted, would lead to conviction of persons sought to be summoned. This extraordinary

power can be exercised by the Court *suo-moto* or on an application moved by the complainant/prosecution.

The controversy, in hand, is squarely covered by the decision rendered in ***Sarojben Ashwinkumar Shah etc. vs State of Gujarat and others 2011(3) RCR (Criminal) 852***, wherein, it was held that the Court while exercising the powers under Section 319 of the Code, must keep in view full conspectus of the case including the stage at which the trial has already proceeded and the quantum of evidence collected till then. It was further held that power to summon accused under Section 319 of the Code is an extraordinary power and should be used very sparingly and only if compelling reasons exist. This power cannot be exercised only on the basis of conducting a fishing inquiry.

This Court in case ***Hasin and another vs State of Haryana 2011(2) RCR (Criminal) 429***, has held that vague and ambiguous or casual statement made by witnesses cannot be made the basis to summon the person to face trial under Section 319 of Code of Criminal Procedure.

Hon'ble the Apex Court in case ***Ram Singh and others vs. Ram Niwas and another 2009(3) RCR (Criminal) 501*** has held that power under Section 319 Cr.P.C must be exercised very sparingly and not as a matter of course. It is further held that it is error to summon a person as accused on the ground that a prima-facie case was made out. The court is to arrive at a satisfaction that evidence adduced on behalf of the prosecution, if goes un rebutted, would lead to conviction of the persons sought to be added as accused in this case.

Hon'ble the Apex Court in case ***Mohd. Shafi vs Mohd. Rafiq and another 2007(2) RCR (Criminal) 762*** has held that before the court exercises its discretionary jurisdiction in terms of Section 319 of the Code of Criminal Procedure, it must arrive at the satisfaction that there exists a

possibility that the accused so summoned in all likelihood would be convicted.

In view of facts and law position as explained above, there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

March 28, 2016
pooja

(DAYA CHAUDHARY)
JUDGE