

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

**Crl. Rev. No.1281 of 2015 (O&M)
Date of decision : 18.11.2016**

Om Pati

.....Petitioner(s)

Versus

State of Haryana and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. G.S. Sandhu, Advocate
for the petitioner.

Mr. Apoorv Garg, DAG, Haryana.

Mr. Pankaj Bali, Advocate
for respondent no.2.

ANITA CHAUDHRY, J.

This revision is directed against the order dated 13.01.2015, passed by the Additional Sessions Judge, Karnal, vide which the application under Section 319 Cr.P.C. for summoning Rajesh had been dismissed.

The petitioner had been asked to place on record the document that was referred in the statement of the victim. With much reluctance the statement of the victim has been placed on record. It is stated that the exhibit referred to in the statement appears to be different than the one appearing on the photocopy.

I have heard counsel of both the sides.

The counsel for the petitioner contends that the mother had lodged the FIR and at that stage she had only named Rajbir who enticed the minor daughter but when the girl returned, her statement Annexure P-2 was recorded and she had named some other persons and all of them have been challaned except Rajesh and there are specific allegations of rape against him. The counsel refers to the statement made by the victim before the Court and says that the victim had named Rajesh in her statement and the Court below has wrongly dismissed their application.

The counsel appearing for respondent no.2 states that the true facts were not brought on record by the prosecution and the victim had approached the High Court and had filed a protection petition along with Jitender and the victim has given a clean chit to Jitender and other persons named by her in the second statement made under Section 164 Cr.P.C. and there was enmity with the family of Rajesh and the present petitioner had filed a habeas corpus petition wherein allegations were that it was Jitender who had confined the victim. The counsel refers to the statement made in the Court and states that the victim had admitted that in her statement given to the police, she had mentioned that she had married Jitender at Chandigarh but had denied that statement before the Court and she was confronted with the statement placed at page no.31 of the file.

The State counsel was asked about the petition that was filed in the High Court. The State counsel states that there is a document in the police records which refers to Crl.Misc.M-25357-2014 and another petition filed by Om Pati.

An additional accused can be summoned under Section 319 Cr.P.C. and that power can be exercised when the Court records satisfaction that there is evidence which is more than *prima facie* and it shows the involvement of some other person. The victim in her statement given under Section 161 Cr.P.C. had given all together different story which is in contradiction with the version which appears later before the Court. The prosecutrix had named Jagdish, Jitender, the parents of Jitender and total five persons were challaned by the police except Rajesh. The victim had given a clean chit to Jitender, his parents and others who were challaned and had partly turned hostile.

In **Hardeep Singh Vs. State of Punjab 2014(2) SCR 1**, it has been held that the degree of satisfaction for summoning the additional accused has to be different. In the present case, the prosecution was not able to bring any additional material so as to enable the Court to summon the additional accused.

The Court below considered the material produced before it and had rightly observed that the provisions of Section 319 could not be invoked only on mere allegations.

The Court cannot summon the additional accused only on the mere asking and that practice has always been discouraged. I find no infirmity in the order.

The petition is dismissed.

18.11.2016

Sunil

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANITA CHAUDHRY)
JUDGE