

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

Crl. Revision No. 1051 of 2016 (O&M)
Date of decision: December 16, 2016

Jeetu @ Jitender

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Abhilaksh Grover, Advocate
for the petitioner.

Mr. Vikas Malik, DAG, Haryana.

Mr. RD Yadav, Advocate,
for the complainant.

JAISHREE THAKUR, J. (Oral)

The instant revision has been filed seeking to challenge the impugned order dated 15th January, 2016, summoning the petitioner as an accused in FIR No. 3 dated 10.9.2015 registered under Sections 376, 363, 342, 366 IPC, Section 4 of the Protection of Children from Sexual Offence Act, 2012 and Section 3 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

In brief, the facts are a FIR was registered on the statement of the prosecutrix aged 15 years, wherein she stated that on 10th September, 2015, while she was going home from the school for lunch, one person by the name of Lokesh of Jat caste met her on the street and after forcibly

taking her into a room molested her, while also abusing her of being of a

lower caste. On reaching home, she narrated the entire incident to her mother. Thereupon, her mother brought her to the police station for taking necessary action against the accused. The statement of the young prosecutrix was recorded before the Sub Inspector, Police Station Women Palwal on 10th September, 2015 itself. Thereafter she was produced on the very next date i.e. 11th September, 2015 before the Judicial Magistrate Ist Class, Palwal, where she narrated the entire incident again, but this time implicated another person namely the petitioner herein. In the statement that was recorded under Section 164 of the Code of Criminal Procedure (for short “**Cr.P.C.**”), the prosecutrix stated that both the persons committed wrong acts with her. Investigation was carried into the said case, and the Deputy Superintendent of Police found the petitioner herein innocent and his name was kept in column No.2 of the challan. Challan was presented only against accused Lokesh, and the matter was committed to the Additional Sessions Judge Palwal. Before the Additional Sessions Judge, Palwal, statement of the young prosecutrix was recorded wherein she reiterated (in camera proceedings) that both Lokesh and the petitioner Jeetu herein committed rape upon her.

During the cross-examination, an application was preferred under Section 319 of Cr.P.C. to summon the petitioner herein as an accused in the aforesaid FIR. The matter was contested and by the impugned order dated 15th January, 2016, the petitioner herein has been summoned as an additional accused to face trial.

Mr. Abhilaksh Grover learned counsel appearing on behalf of

the petitioner contends that the impugned order is liable to be set aside since there is nothing on the record to hold the petitioner guilty of the offences under Section 376 IPC. It is argued that initially when the FIR was lodged on the statement made by the prosecutrix, the petitioner herein was not named and all the allegations were against Lokesh only. It is submitted that it was only later when the statement was recorded under Section 164 Cr.P.C. that the prosecutrix added his name as a person who had committed rape upon her along with Lokesh. It is submitted that the police investigated the matter thoroughly and on not finding any evidence did not present challan against him. It is argued that statement given by the prosecutrix is an afterthought and he has been falsely implicated. Learned counsel for the petitioner also contended that till cross-examination has been completed and there is substantial evidence on record, there was no reason to summon the petitioner as an additional accused.

Per contra, Mr. Vikas Malik, DAG, learned counsel appearing on behalf of the State and Mr. R.D Yadav learned counsel for the complainant submit that the impugned order has been passed by taking into account that the prosecutrix had named the petitioner herein in her statement that was recorded under Section 164 of Cr.P.C. on 11th September, 2015 i.e. immediately on the next date of occurrence, and had maintained her statement in its entirety before the Additional Sessions Judge, while deposing as a witness in the proceedings about the involvement of the petitioner herein in the commission of offence complained of under Section 376 IPC.

I have heard learned counsel for the parties and have gone through the record with the assistance of the learned counsel for the parties.

Admittedly, the power vested with the Court under Section 319 Cr.P.C. should be used sparingly and the Court must be satisfied that there is a strong ground made out for summoning a person as additional accused. Learned counsel for the petitioner relies upon a recent judgment rendered in **Hardeep Singh etc. Versus State of Punjab and others AIR 2014 Supreme Court 1400**, where it has been held that there should be a strong prima facie case made out before a person should be summoned under Section 319 Cr.P.C. There can be no dispute regarding this argument, but in the instant case, there is a statement that has been made by the young prosecutrix immediately after the date of occurrence naming the petitioner as one of the persons who had violated her. No doubt, the name is not reflected in the FIR and he has been found innocent in the investigation but in the instant case that would be of no consequence. In order to constitute an FIR in terms of Section 154 of the Code of Criminal Procedure, 1973, two conditions are to be fulfilled (a) what is conveyed must be an information; and (b) that information should relate to the commission of a cognizable offence on the face of it. In other words, FIR is only a complaint to set the affairs of law and order in motion. When the first information report is registered, it only gives a gist of the offence that has been committed. It is not necessary that the first information report should be detailed one. What needs to be seen is if the accused was named when a detailed statement was recorded. A similar case came up for hearing in

Rotash v. State of Rajasthan (2006) 12 SCC 64 wherein the FIR did not contain the name of the appellant and a contention was advanced that the informant who was known to the accused and who could easily identify the assailant, yet he was not named in the FIR, and therefore, the prosecution case was not to be believed. The Apex Court took note of the fact that the investigation had taken place promptly and the accused persons were arrested being named by the witnesses. After taking note of the fact situation the Court proceeded to observe as follows: -

“The First Information Report, as is well known, is not an encyclopedia of the entire case. It need not contain all the details. We, however, although did not intend to ignore the importance of naming of an accused in the First Information Report, but herein we have seen that he had been named in the earliest possible opportunity. Even assuming that P.W.1 did not name him in the First Information Report, we do not find any reason to disbelieve the statement of Mooli Devi-P.W.6. The question is as to whether a person was implicated by way of an after-thought or not must be judged having regard to the entire factual scenario obtaining in the case. P.W.6 received as many as four injuries. A lacerated wound with diffuse swelling was found on her right hand, which was caused by a hard and blunt substance. She had diffuse swelling on her left leg as also on knee, which were again caused by a hard and blunt substance. There was another lacerated wound on her person. She had also complained of pain and tenderness on her chest.”

The ratio laid down in **Rohtas case** has subsequently been followed in **Ranjit Singh and others v. State of Madhya Pradesh (2011) 4 SCC 336** wherein the Court opined that in case the informant fails to name a

particular accused in the FIR, and the said accused is named at the earliest opportunity when the statements of witnesses are recorded, the accused can not derive any benefit.

In the instant case, the young prosecutrix had complained of the act of rape having been committed upon her. Even though she did not name the present petitioner in the FIR on 10.9.2015, but immediately within a period 24 hours, when her statement was recorded before the Judicial Magistrate, the petitioner has been named therein and she has maintained the said statement even before the Additional Sessions Judge, Palwal in the proceedings that were initiated under the said FIR. The gravity of the offence as committed upon the prosecutrix is of such a nature that cannot be brushed under the carpet and her statement in the examination-in-chief would be enough evidence on the record of the learned Additional Sessions Judge to allow the application filed under Section 319 Cr.P.C.

Another argument has been raised that summoning if any could have been done only when the prosecutrix had been cross-examined and if on cross-examination some cogent and material evidence emerged, only then an application under Section 319 Cr.P.C. would have been allowed. This question too has been answered in **Hardeep Singh (supra)**, where the following question was framed:-

“Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted.”

The Hon'ble Apex Court, while examining the meaning of “evidence” concluded that the evidence would also mean the statement given in

examination -in-chief and held as under:-

“70. With respect to documentary evidence, it is sufficient, as can be seen from a bare perusal of Section 3 of the Evidence Act as well as the decision of the Constitution Bench, that a document is required to be produced and proved according to law to be called evidence. Whether such evidence is relevant, irrelevant, admissible or inadmissible, is a matter of trial.

71. It is, therefore, clear that the word “evidence” in Section 319 Cr.P.C. means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the Court to decide whether power under Section 319 Cr.P.C. is to be exercised and not on the basis of material collected during investigation.”

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80. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 Cr.P.C. The ‘evidence’ is thus, limited to the evidence recorded during trial.

Q.(ii) Does the word ‘evidence’ in Section 319 Cr.P.C. means as arising in Examination-in-Chief or also together with Cross-Examination?

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82. We have given our thoughtful consideration to the diverse views expressed in the aforementioned cases. Once examination-in-chief is conducted, the statement becomes part of the record. It is evidence as per law and in the true sense, for

at best, it may be rebuttable. An evidence being rebutted or controverted becomes a matter of consideration, relevance and belief, which is the stage of judgment by the court. Yet it is evidence and it is material on the basis whereof the court can come to a prima facie opinion as to complicity of some other person who may be connected with the offence.”

While concluding, the question as posed above, the Hon'ble Apex Court held that “the power under Section 319 Cr.P.C. can be exercised at the stage of completion of examination-in-chief and court does not need to wait till the same evidence is tested on cross-examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence”.

Similarly, in the instant case, the statement of the prosecutrix before the Judicial Magistrate Ist Class and the Additional Sessions Judge in her examination-in-chief naming the petitioner as person who committed the offence of rape, is enough evidence for the petitioner to be summoned under Section 319 of Cr.P.C. Such summoning does not have to wait till the statement is tested in cross examination. In a recent decision in the matter of *Vijay @ Chinee v. State of Madhya Pradesh*, (2010) 8 SCC 191, the Apex Court has revisited the law relating to evidence of a victim to determine the liability of an accused in an offence of rape. The Apex Court examined its earlier decisions to hold that the evidence of the victim, if found credible, was sufficient to convict the accused.

Therefore, in the facts of the case in hand, there being enough evidence on the record the summoning order does not suffer from any

perversity or infirmity. Revision petition stand dismissed accordingly.

However, it is stipulated that any observations made herein would not effect the merits of the case, since evidence is always rebuttable.

December 16, 2016
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No