

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

**Criminal Revision No.2152 of 2016 (O&M)
Date of decision: 03.06.2016**

Naresh Kumar

..Petitioner

Versus

State of Haryana

..Respondent

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers 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. S.K. Yadav, Advocate
for the petitioner.

Daya Chaudhary, J.

CRM-18746 of 2016

There is delay of 12 days in filing this revision petition.

An application has been moved under Section 5 of the Limitation Act for condonation of delay of 12 days in filing this revision petition, which has been supported by an affidavit of the applicant-petitioner.

Application is allowed as per the grounds mentioned therein and delay of 12 days in filing this appeal is condoned.

CRR No.2152 of 2016

The present revision petition has been filed to challenge the impugned order dated 20.02.2016 passed by the Additional Sessions Judge, Narnaul, whereby, application moved by the prosecution under Section 319

Cr.P.C. has been allowed.

Briefly, the facts of the case are that FIR No.115 dated 14.05.2014 was registered under Section 354-A, 363, 366-A, 376 and 120-B IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 at Police Station Nangal Chaudhary. The matter was investigated into by three Deputy Superintendents of Police. The petitioner was found innocent and was kept in column No.2 of the report under Section 173 Cr.P.C. After recording of statement of the complainant, an application was moved under Section 319 Cr.P.C., which was dismissed on 02.12.2014. Thereafter, it was challenged before this Court by way of filing Criminal Revision No.189 of 2015, which was allowed vide order dated 02.11.2015 and the trial Court was directed to pass order afresh. Meanwhile, proceedings before the trial Court were completed and the statements of the accused under Section 313 Cr.P.C. were recorded. Thereafter, another application under Section 319 Cr.P.C. was moved by the prosecution on 12.12.2015, which was allowed vide order dated 20.02.2016, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioner submits that the impugned order is non-speaking and nothing has been discussed therein with regard to involvement of the petitioner and as such, the same is liable to be set-aside. The matter was already investigated into and nothing was found against the petitioner by the Investigating Agencies on three occasions but in spite of that, the petitioner has been summoned to face trial as an additional accused.

Heard arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents available on

the file including order passed by this Court in Criminal Revision No.189 of

2015.

The facts regarding lodging of FIR against the petitioner as well as other accused; finding the present petitioner innocent during investigation and the earlier application moved under Section 319 Cr.P.C. by the prosecution are not disputed. Earlier application moved under Section 319 Cr.P.C. for summoning the petitioner and Sunil as an additional accused was dismissed vide order dated 02.12.2014 and the same was challenged before this Court by way of filing Criminal Revision No.189 of 2015. The relevant portion of the order passed by this Court in Criminal Revision No.189 of 2015 is reproduced as under:-

“ The learned trial Court, while dismissing the application under Section 319 Cr.P.C. observed that since the police investigation against Naresh and Sunil is still pending, the application under Section 319 Cr.P.C. was not maintainable at that stage. Now, there is a change in the circumstances as investigation qua them stands completed and they have been found innocent by the investigating agency. The warrants of arrest issued against them have already been cancelled.

In view of the above, the present petition is allowed and impugned order dated 02.12.2014, is hereby set aside. However, in case, a fresh application under Section 319 Cr.P.C. is moved by the complainant, within two weeks from the date of receipt of a certified copy of this order, the

competent Court shall pass a fresh order on the application so filed, in the light of the law laid down in Lok Ram Vs. Nihal Singh, 2006(2) R.C.R. (Criminal) 707; Samaj Parivartan Samudaya Vs. State of Karnataka, 2012(3) R.C.R. (Criminal) 788; Suman Vs. State of Rajasthan, 2009(4) R.C.R. (Criminal) 908; and Joginder Singh Vs. State of Punjab, 1979 AIR (SC) 339, after affording full opportunity of hearing to the parties.”

While passing order dated 02.11.2015, it was directed that in case, fresh application is filed under Section 319 Cr.P.C. by the complainant within a period of two weeks from the date of receipt of certified copy of the order, the competent Court shall pass the order afresh in view of certain judgments as mentioned in the order after affording full opportunity of hearing to the parties. Thereafter, an application was moved under Section 319 Cr.P.C. on 12.12.2015, which was allowed vide order dated 20.02.2016, which has been challenged by way of filing the present revision petition.

Learned counsel for the petitioner has challenged the impugned order on the ground that the same is non-speaking and the same has been passed in a casual and hurried manner without giving any finding. It is also the argument of learned counsel for the petitioner that the matter has already been adjudicated upon and nothing was found against the petitioner by the Investigating Agency on three different occasions and the impugned order of summoning is liable to be set-aside.

As per allegations levelled in the FIR as well as the statement

On perusal of statement of the victim recorded under Section 164 Cr.P.C., the role of present petitioner is clear as he was also involved in commission of offence. The relevant portion of her statement is reproduced as under: -

On 11.05.2014 my parents were not at home and I was alone in the house. Then Munna alias Yogesh, Aman and Hanif came to our house and Munna demanded a bucket from me for taking bath and went away after giving chocolate. After eating the

chocolate, I became senseless. Then as these persons said, I did so. Then Munna after removing the whole amount and ornaments of my father by keeping the same in a bag after sitting me on the motor cycle left me at the terminal. Where Naresh and Sunil Kumar accompanied with their motor cycle were present there. Naresh gave a bundle of enough money to Munna. Then Munna and Aman went away back and Naresh and Sunil after sitting me in the middle on the motor cycle took me away to Nimbhore. Then in the middle I gained senses, then I asked the said person that as to whether I may go back to my house, then these persons by showing the pistol started giving threat and pointed the gun on my back. Then they took me away to Nimbhore, where Naresh committed forcible rape with me and thereafter Sunil also committed rape with me. While committing rape, Naresh also clicked my photographs and also clicked bare photographs and as when I said regarding going to my house, then these persons extended threats of showing my photograph. In this way, these persons kept me at Nimbhore for 8/9 days and thereafter, they took me away to Jaipur. Naresh and Sunil committed rape with me for 8/9 days turn by turn. In Jaipur these persons took a room on rent and

then they turn by turn committed rape with me. Then from Jaipur they took me away to a village, where they both also committed rape with me. Then from there, they took me away to Dharuheda, there also they took a room in a hotel from three days. There also they committed forcible rape with me. From there Naresh sat me in a bus of Jammu and Sunil by taking me away went away to Jammu and kept me at Jammu for four-five days and Sunil also committed forcible rape with me at there. Then we also went to see Mata Vaishno. Sunil asked there that his money has been over. I bring the same from my friend and left me at there and asked me to stand there and started talking on the mobile and started saying that the girl is good, how much amount will be come by. On this I started understanding that he is talking to sell me. By rushing away from there I went to the police officials. Then the police officials reached me at the Delhi police. Delhi police reached me in the Kilkari Institution. Then they made a phone call to my parents, then they brought me from there. When we got down in the way, then a lady police official sitting adjacent to me has asked me not to take the name of anybody else. In my earlier statement, I could not disclose my whole matter. These persons

should be awarded death penalty. Besides this, I have to say nothing.”

In the investigation, the petitioner was found innocent on the ground that he was not present at the place of occurrence as he was doing the work of milk and was present at his shop at Gavri. The Panchayat of two villages was convened and members of the Panchayat had stated that there was no complaint against accused-Naresh Kumar. As per statement of the victim under Section 164 Cr.P.C, there were specific allegations of involvement of the present petitioner as the victim was taken by him and Sunil on a motorcycle and was threatened by them on pistol point. She was taken to village Nimbhore and rape was committed upon her by Naresh (the present petitioner) and Sunil. Certain naked photographs were also taken. The victim was taken to Jaipur and both the accused including the present petitioner committed rape upon her for 8-9 days. Thereafter, she was taken to Dharuheda in a hotel and was kept for three days. She was taken to Jammu for a period of 4-5 days and there also, rape was committed. The petitioner as well as accused-Sunil were snamed from the very beginning but no action was taken against them. The challan was presented against three accused for kidnapping and other offences. The statement of the victim was recorded under Section 164 Cr.P.C. which finds corroboration from her MLR dated 15.06.2014. The victim as well as her grand father made complaint and on the basis of statement of the victim, who was minor at that time and which has been corroborated by the MLR. The plea of alibi is a matter of evidence, which can be seen during trial. Simply by saying that the members of the Panchayat gave statement that the present petitioner was not involved, cannot be considered as ground not to summon the

present petitioner.

It has been held by Hon'ble the Apex Court in **Hardeep Singh and another vs. State of Punjab and others 2014(1) RCR (Criminal) 623** that the satisfaction for summoning a person under Section 319 Cr.P.C. should be the same as for framing of charge and said satisfaction is to be recorded in case, the Summoning Court is of the opinion that some other persons, who have been sought to be summoned are also involved in commission of offence. Not only prima facie case is to be seen from the evidence led before the trial Court but it is also to be seen as to whether the persons sought to be summoned can be convicted on the basis of said evidence available on record.

In the present case, the statement of the victim recorded under Section 164 Cr.P.C. as well as the statement recorded before the trial Court, are corroborated by the MLR which shows the involvement of the petitioner in commission of offence. It cannot be said that the impugned order has been passed hurriedly without appreciation of evidence available on record whereas specific allegations are there in the FIR as well as in the statement of the victim, which have been corroborated by the medical evidence.

Accordingly 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.

03.06.2016
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(DAYA CHAUDHARY)
JUDGE