

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

Criminal Revision No. 3482 of 2014 (O&M)
Date of decision: November 4th, 2016

Sunder Pal Yadav

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Sham Lal Bhalla, Advocate
for the petitioner.

Mr. Sidakmeet Sandhu. AAG, Punjab.

None for respondents No. 3.

JAISHREE THAKUR, J.

Aggrieved against the order dated 6.9.2014 passed by Principal Magistrate, Juvenile Justice Board, Ludhiana, dismissing the application filed under Section 319 of the Code of Criminal Procedure (for short '**the Code**') for summoning Faggu Ram son of Sukhchain as an accused in FIR No. 13 dated 9.1.2014 under Section 363, 366-A, 376 and 120-B IPC, the instant petition has been filed.

An FIR No. 13 dated 9.1.2014 was registered at Police Station Focal Point, Ludhiana under Sections 363, 366-A, 376 and 120-B IPC. The complainant in the said FIR stated that he has three children and his elder daughter, namely, Priya Kumari aged about 16/17 years studying in 11th standard was kidnapped on 6.1.2014 by Sham Sunder @ Kannu with an

intention of marrying her. This information was given to him by his father Sita Ram Yadav. In the said FIR, it was also mentioned that the complainant had been informed that Faggu Ram son of Sukhchain father of Sham Sunder @ Kannu also connived with his son Sham Sunder in kidnapping his daughter. The daughter of the complainant was recovered and her statement was recorded under Section 161 as well as under Section 164 of the Code. Thereafter, statement of the prosecutrix was also recorded in the Court as PW-4, in which she stated that on 6.1.2014 accused Sham Sunder kidnapped her and when they were on their way Faggu Ram met them and handed over one bag to Sham Sunder accused having money and a sharp edged weapon like knife and told the accused to go to the house of his brother Raja Ram at Vishkarma Colony Jamalpur who had made all the arrangement for them. After recording of the statement of the prosecutrix, an application was preferred under Section 319 of the Code for summoning Faggu Ram as an accused. The said application came to be dismissed after appreciation of the statement of the prosecutrix under Section 164 of the Code. Aggrieved against the said order dismissing the application filed under Section 319 of the Code, the instant petition has been preferred.

Since the accused was juvenile, the matter was being tried by the Juvenile Justice Board and the Principal Magistrate noted that there is no involvement of Faggu Ram in the statement recorded by the prosecutrix before the Magistrate. The explanation sought to be made for not mentioning the involvement of Faggu Ram before the Magistrate was on account of the fact that the police itself had threatened her not to name

Faggu Ram was noted. However, the explanation was rejected noting that the police officials were not present in Court and had been sent out side while the statement was being recorded, therefore, the Board felt that there was no pressure upon the prosecutrix while she was making the statement.

Learned counsel for the petitioner, while assailing the impugned order, has submitted that the name of Faggu Ram was mentioned by the complainant at the time of registering the FIR and thereafter the prosecutrix in her statement made in the Court has categorically taken the name of Faggu Ram as a person involved in her kidnapping and, thus, the order of the Juvenile Justice Board ought to be set aside and Faggu Ram be ordered to be summoned as an accused.

I have heard learned counsel for the petitioner as well as the counsel appearing on behalf of the State.

There is no doubt that the Courts have ample powers to summon a person as an additional accused. However, such power has to be exercised when there is strong and cogent evidence against him available on the record. In the case of **Hardeep Singh etc. Versus State of Punjab and others AIR 2014 Supreme Court 1400**, a Constitution Bench of the Apex Court, while taking into consideration several judgments rendered by the Apex Court itself, pertaining to the power of the Courts under Section 319 of the Code to summon as accused, held that such power is discretionary and extraordinary power, which is to be exercised sparingly and only in those cases where circumstances of the case so warrants, when strong and cogent evidence occurs against such a person from the evidence led, that such

power should be exercised. The Constitution Bench also went on to hold that test which has to be applied is one which is more than prima facie case. It was further held that the satisfaction of the court should be such that the evidence if goes un rebutted would lead to conviction.

In the instant case, the complainant had mentioned that he had been informed by his father that Sham Sunder has kidnapped his daughter with the intention of marrying her at 7.30 p.m. A vague allegation was made in FIR that Faggu Ram son of Sukhchain, who was father of Sham Sunder accused also connived with his son Sham Sunder @ Kannu in kidnapping the prosecutrix. Even in the statement recorded in deposition, there is no mention as to who had given that information to the father of the complainant, whereas there is very specific averment that his father had informed him that accused Sham Sunder @ Kannu had kidnapped his daughter. Therefore, the argument raised that there is a specific mention of the involvement of Faggu Ram in the FIR and, thus, he should be summoned under Section 319 of the Code is unsustainable. It was rightly noted by the **Juvenile Justice Board** that the prosecutrix had made no mention of the involvement of Faggu Ram in her statement either under Section 161 or under Section 164 of the Code recorded before the Magistrate. Even on investigation by the police involvement of Faggu Ram in the alleged incident was not found. There is also no reasonable explanation as to why the police would be shielding Faggu Ram.

Thus, keeping in view the facts and circumstances of the present case and the ratio as laid down in **Hardeep Singh's case (Supra)**,

this Court is of the opinion that no sufficient evidence is available on record to summon Faggu Ram as an accused other than the statement that was recorded by the prosecutrix which is at variance with the statement recorded under Sections 161 and 164 of the Code.

In view of the above, on account of the fact that there is no sufficient material available on record as evidence to summon Faggu Ram as accused, no ground is made out to interfere with the reasoned order passed by the Juvenile Justice Board in dismissing the application filed under Section 319 of the Code.

Consequently, the revision petition is dismissed.

November 4th , 2016
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No