

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

**Crl. Misc No. 27881 of 2016 in/and
Crl. Revn No. 2717 of 2016
Date of decision : 22.09.2016**

Sabnam

....Petitioner

versus

State of Haryana and ors.

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Ashok Kaushik, Advocate
for the petitioner.

RITU BAHRI, J.

C.M. No. 27881 of 2016

Application is allowed as prayed for.

Accordingly, Annexure P-3 is taken on record.

Crl. Revn No. 2717 of 2016

The present revision petition is directed against order dated 02.07.2016 whereby learned Additional Sessions Judge, Palwal has dismissed the application for summoning additional accused i.e respondent Nos. 2 to 6.

Brief facts of the case are that F.I.R No. 154 dated 08.06.2011 under Sections 452/363/366-A/506 IPC was registered. After completion of investigation, challan was presented. The victim/petitioner in her deposition as P.W.1 categorically stated the specific role played by the accused-respondent Nos. 2 to 6 along with the accused facing trial. As per her, in the year 2011, she was residing with her family at Tijara (Rajasthan) and on one day, in the year 2011, when her parents had gone to the house of her aunt,

the accused Ashu, Jahid and Sahib came to the house and forcibly took her to the jungal area of Pandushila. Sahib was the neighbour in Tijara, Ashu is brother-in-law of Sahib and Jahid is cousin of Sahib. They committed gang rape upon her in the field of mustard in the area of Pandushila. On the next day, her parents came there while searching her and at that time she was naked. On seeking her parents, all the three accused ran away from the spot and her mother provided her clothes and brought back to the house. Her father lodged a complaint regarding this incident in P.S Tijara (Rajasthan). On 04.04.2011, statement of the prosecutrix was recorded under Section 164 Cr.P.C before learned Magistrate Tijara but at about 7/8 A.M, when she was providing fodder to the buffalo, the accused Ashu, Jahid and Sahib came there and again forcibly kidnapped her and took her to Ajmer (Rajasthan) in a car and confined her there for three days. They again committed rape upon her. After three days, they took her to P.S. Tijara and after that she along with police officials went to the Court of learned Illaqa Magistrate at Kishangarh (Rajasthan) where her statement under Section 164 Cr.P.C was recorded.

After this incident, her parents shifted her at village Malai at the house of her uncle Sajid and she stayed there for about one month. On 16.05.2011, accused Ishab, Sahidan, Jahid, Habi, Gunga @ Fajru came at the house of his uncle at village Malai and at that time, petitioner and her aunt Anisha were present in the house and other family members had gone to the fields. Accused Sahidan gagged the mouth of the petitioner, Habi and Jahid forcibly took her in the car, Ishab put some weapon on her neck and they forcibly kidnapped her from there and took her at the house of Gunga @ Fajru in village Nankheri (Rajasthan). Ishab and Sahibdan dropped her

at the house of Gunga @ Fajru and thereafter, remaining accused i.e Jahid, Habi, Gunga @ Fajru and Habib committed repeatedly rape upon her up to three days. Thereafter, petitioner was shifted to village Gotuli Khadarpur (Rajasthan) in a house, where she was kept confined and all the above four accused again committed rape upon her and gave her beatings. Thereafter, they threatened the petitioner to depose in their favour. Then they shifted her in village Mojpur (Rajasthan) at the house of Sheru. Thereafter again, Jahid, Habi, Gunga @ Fajru, Sheru committed rape upon her. She was kept confined for about six months. The accused persons i.e Jahid, Habib, Habi, Gunga @ Fajru took her to the Court of learned Illaqa Magistrate, Tijara where she denied to go with her parents due to pressure and threatening of accused persons. On that day, her statement was not recorded and she was sent to Children House, Jaipur. She remained there for six months and after six months, she was produced at Kishangarh Court by the police. At that time, accused Habi, Habib, Sheru accompanied her and they gave some money to the police. Due to the pressure, she deposed in their favour at Kishangarh court and thereafter, she was again sent to Children House, Jaipur. Accused Ashu and Habi used to visit her at Children House, Jaipur and they threatened her not to go with parents otherwise they will kill her and her parents. After about two and half years, she telephonically contacted her father and asked him to brought her back to the home. Subsequently, she was brought back home by the orders of competent authority on 29.07.2014. After reaching home, she revealed the entire incident to her parents. She then visited the police station Hathin to lodge the complaint but local police did not take any action. On complaint made by father of the petitioner, inquiry was marked to P.S. Hathin. Thereafter, statement of the petitioner

was recorded, which was not correct. Police also did not get recorded her statement under Section 164 Cr.P.C before Illaqa Magistrate. Her statement was also recorded before learned Illaqa Magistrate and Hathin on 20.01.2016. Accused Ishab was present in the Court.

At this stage, an application under Section 319 Cr.P.C was moved, which was dismissed and hence the present petition.

Learned counsel for the petitioner has placed on record the copy of statement of the petitioner under Section 164 Cr.P.C. A perusal of this statement shows that no time, date and place has been mentioned by the petitioner. At the same time, petitioner has not been able to show to the Court as to what statement was made by her before the Illaqa Magistrate, Tejara where she denied to go with her parents and she was sent to Children House, Jaipur. Challan in the present case was presented against Irshad. Thus, only the statement of the petitioner under Section 164 Cr.P.C would not be sufficient evidence in the light of the guidelines laid down by Hon'ble the Supreme Court in a case of ***Hon'ble the Supreme Court in a case of Hardeep Singh vs. State of Punjab, 2014(1) RCR (Criminal) 623*** wherein Hon'ble the Supreme Court observed that the power under Section 319 Cr.P.C. can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to hereinabove, adding a person as an accused, whose name has been mentioned in Column 2 of the charge sheet or any other person who might be an accomplice.

*Section 319(1) Cr.P.C. empowers the court to proceed against other persons who **appear** to be guilty of offence, though not an accused*

before the court. The word “appear” means “clear to the comprehension”, or a phrase near to, if not synonymous with “proved”. It imparts a lesser degree of probability than proof. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

In the present case, the victim has not given any time, date and place. She only stated that she has been kidnapped on 16.05.2011 and thereafter was shifted from place to place. There is no medical examination of the victim. Further on one occasion she deposed in favour of the accused before the Illaqa Magistrate, Tejara and denied to go with her parents. She stayed with the accused for six months.

Taking into consideration the above facts and circumstances of the case, no ground is made out to interfere in the order dated 02.07.2016.,

The petition stands dismissed.

22.09.2016

G Arora

(RITU BAHRI)
JUDGE