

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

CRR-4252-2015

Date of decision: 21.10.2016

Jaspreet Kaur

...Petitioner

Versus

State of Punjab & Anr.

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. S.K. Bokolia, Advocate,
for the petitioner.

Mr. Arshdeep S. Kler, DAG, Punjab.

Mr. Rajesh Bhatheja, Advocate,
for respondent No.2.

JAISHREE THAKUR, J. (ORAL)

The instant petition has been filed to challenge the impugned order dated 28.08.2015 passed by the Court of learned Addl. Sessions Judge, Moga by which the petitioner has been ordered to be summoned under Section 319 Cr.P.C. in a criminal case arising out of FIR No.90 dated 01.09.2014 under Section 376 of Indian Penal Code, Section 7 of Protection of Children from Sexual offences Act, 2012 and under Section 7(11) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

In brief the facts as alleged by the petitioner are that the petitioner and her husband are residents of village Chuharchak District Moga and they had employed the parents of prosecutrix for cleaning the shed and collecting the cow dung. The family of the prosecutrix had taken a

loan for the elder daughter's marriage from the family of the petitioner and despite making several requests to return the money, the same was not returned. In order to avoid repayment an FIR was got registered against the husband of the petitioner under Section 376 of Indian Penal Code, Section 7 of Protection of Children from Sexual offences Act, 2012 and under Section 7(11) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. On registration of the FIR, the husband of the petitioner was arrested and thereafter released on regular bail under Section 167(2) Cr.P.C. The Investigating Agency completed the investigation of the case and submitted the report under Section 173 Cr.P.C. against accused Jasvir Singh @ Kala i.e. the husband of the petitioner before the Illaqa Magistrate in which the name of the petitioner did not come up during investigation. After submitting the police report, the prosecution witnesses were examined and on the basis of the statement of PW-3 prosecutrix, learned Assistant Public Prosecutor for the State moved an application for summoning the petitioner to face trial along with the main accused in the case filed. The learned trial Court thereafter summoned the petitioner by the impugned order dated 28.08.2015. Aggrieved against the impugned order of summoning, on an application moved under Section 319 Cr.P.C., the petitioner who is the wife of accused Jasvir Singh facing trial, the instant petition has been filed.

Counsel for the petitioner contends that learned trial Court has ignored the fact that the name of the petitioner was not mentioned in the FIR and the only statement made therein is that the petitioner on being informed by the prosecutrix that she had been raped by the husband of the petitioner started beating the prosecutrix and her mother. It is also contended that in

the MLR which is dated 01.09.2014 there is no specific mention of any sort of injury on the body of the victim and as such the petitioner cannot be summoned to face trial under Sections 376 & 323 IPC.

Per contra, counsel appearing on behalf of respondents have argued that the petitioner being the wife of Jasvir Singh has rightly been summoned under Section 319 Cr.P.C. by the learned Court below after going through the statement of the prosecutrix.

I have heard learned counsel for the parties and have perused the FIR as well as the statements recorded.

The petitioner herein has been summoned to face trial under Sections 376 & 323 IPC. Section 376 IPC reads as under :-

“376. Punishment for rape. - (1) Whoever, except in the cases provided for in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever,—

(a) being a police officer, commits rape—

(i) within the limits of the police station to which such police officer is appointed; or

(ii) in the premises of any station house; or

(iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

- (c) being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or*
- (d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or*
- (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or*
- (f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or*
- (g) commits rape during communal or sectarian violence; or*
- (h) commits rape on a woman knowing her to be pregnant; or*
- (i) commits rape on a woman when she is under sixteen years of age; or*
- (j) commits rape, on a woman incapable of giving consent; or*
- (k) being in a position of control or dominance over a woman, commits rape on such woman; or*
- (l) commits rape on a woman suffering from mental or physical disability; or*
- (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or*
- (n) commits rape repeatedly on the same woman, shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean*

imprisonment for the remainder of that person's natural life, and shall also be liable to fine.”

And Section 323 IPC reads as under :-

“323. Punishment for voluntarily causing hurt.-
Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”

A perusal of the FIR itself shows that specific allegations made against Jasvir Singh, husband of the petitioner, that he was a person who committed rape upon the prosecutrix. In the FIR, there is no mention of the petitioner or that she had suffered any injuries at the behest of the petitioner or any beatings given to her by the petitioner. All allegations have been made against the husband of the petitioner that it is he who tied hands of the prosecutrix and subjected her to rape. The MLR which is on the record as Annexure P-5 also do not show the injuries on the body of the prosecutrix as stated to have been received by the prosecutrix at the hands of the petitioner. In fact, in the statement of the Medical Officer, who was examined as PW-2, there is a definite averment that there were no injuries on the back of the patient nor there was any evidence of use of force on the person of the patient examined.

Learned Court below while summoning the petitioner on an application under Section 319 Cr.P.C., has not appreciated the evidence that was available before summoning the petitioner and has come to the conclusion that the petitioner is directly connected with the commission of the present crime without there being any basis for the same. The accused

Jasvir Singh has been named in the FIR as the person who had ravished the prosecutrix and it cannot be said, that the said offence under Section 376 IPC was committed either by the petitioner or that she was a party thereto. In the statements suffered by the prosecutrix the only role attributed to the petitioner is that she thrashed or that she gave beatings to the prosecutrix and her mother when they went to complain about the rape as committed by her husband. The MLR does not show that there are any such injuries upon the body of the prosecutrix, who was examined by a Medical Officer. In a judgment rendered by the Hon'ble Apex Court in ***Lal Suraj @ Suraj Singh & Anr. vs. State of Jharkhand reported as 2009(1) R.C.R. (Criminal) 504***, the Hon'ble Apex Court dealt with the provisions of section 319 Cr.P.C. which deals with the provision and the power to proceed against the other persons appear to be guilty of offence. The Hon'ble Apex Court came to note that Section 319 Cr.P.C. is a special provision having wide amplitude but is to be required to be exercised very sparingly. It was held that before an order of summoning is passed, the trial Court must form an opinion on the basis of evidences brought before it that a case has been made out that such person could be tried together with the other accused. In a larger Bench judgment of the Hon'ble Apex Court in ***Hardeep Singh Vs. State of Punjab & Ors. 2014(1) R.C.R. (Criminal) 623*** while discussing the several case law came to hold as under:-

“98. Power under [Section 319](#) Cr.P.C. is a discretionary and an extra- ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be

guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

(Emphasis supplied)

99. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under [Section 319 Cr.P.C.](#) In [Section 319 Cr.P.C.](#) the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under [Section 319 Cr.P.C.](#) to form any opinion as to the guilt of the accused."

Applying the aforesaid ratio of the judgments referred to above, this Court is of the opinion that learned Addl. Sessions Judge has not appreciated the evidence led before it while allowing the application summing the petitioner as an accused to face trial under Sections 323 & 376 IPC. The evidence as available on the record would not substantiate that the petitioner was a party to the proceedings of the rape that was committed upon the prosecutrix. At best she could have been summoned under Section

323 IPC for causing simple injuries upon the prosecutrix. However, the medical report does not bear any such proof of the same. The court ought to have applied the test as as specified in **Harjinder Singh supra** . The Courts are required to apply stringent tests, one of the tests is that the Court should come to the reasonable conclusion on the basis of evidence before it that the same is likely to lead to conviction. On the basis of the judgments referred above, it is held that trial Court has erred in summoning the petitioner without fully appreciating the evidence before it .

The revision petition is, thus, allowed and the impugned order is set aside.

21.10.2016
sp

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No.