

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

**Crl. Rev. No. 470 of 2014 (O&M)
Date of decision : 05.05.2016**

Meena Rani

.....Petitioner(s)

Versus

State of Punjab and another

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

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

Mr. K.S. Aulakh, AAG, Punjab.

Mr. Balbir Singh, Advocate
for respondent no.2.

ANITA CHAUDHRY, J.

The instant revision is directed against the order passed by the trial Court on the application filed by the petitioner under Section 319 Cr.P.C. The petitioner was seeking to summon an additional accused who had been named by her in the First Information Report.

A complaint was given by the petitioner, upon which FIR No.45 dated 11.06.2013 was registered at Police Station Kathgarh, District SBS Nagar under Section 376, 323, 506 IPC.

The petitioner is a widow and has two sons, both of them are major. Allegations were levelled by the complainant that she

knew Sucha Singh and Manpreet Singh for the last 6 – 7 years. It was claimed that on 10.06.2013 Such Singh asked her if she wanted to work in a factory. The complainant was inclined to work and as directed, she reached Tibbi Sahib Gurudwara at 2:30 PM. Sucha Singh came on a scooter and asked her to sit on the scooter. The complainant accompanied Sucha Singh. Two kilometers ahead, one Alto car was parked with Manpreet on the driver seat. The complainant was asked to sit in the car. Sucha Singh parked his scooter and came and sat on the back seat along with her and the car moved towards the forest. The complainant shouted for help but the car did not stop and in the middle of the forest she was molested. Allegations were levelled that Manpreet caught hold of her arms while Sucha Singh raped her and thereafter, Sucha Singh caught hold of her arm and Manpreet raped her. Thereafter, both of them got into the car and threw mud over her and fled. The complainant called on the mobile phones of Sucha and Manpreet Singh who threatened her. The complainant then called her son who took her to the civil hospital.

The police got the complainant medically examined and thereafter, filed the challan only against Sucha Singh.

After commitment, the trial had started and the statement of the prosecutrix had been recorded. Thereafter, an application under Section 319 Cr.P.C. was moved seeking to summon Manpreet Singh as an additional accused.

The trial Court noted that an inquiry was held by DSP and it was found that the prosecutrix had illicit relationship with Sucha

Singh for the last 7 – 8 years and Sucha Singh wanted to get rid of the prosecutrix and the prosecutrix was not happy and the complainant had got one FIR registered in January, 2010 under Section 450 & 376 IPC against Sucha Singh. Another FIR in August, 2011 under Sections 376, 377, 506 IPC was registered against Sucha Singh and this was the third FIR which had been registered wherein Manpreet Singh had also been named. The police had found Manpreet to be innocent as on the date of occurrence, his presence was found in the office of the SSP from 1:20 PM to 3:00 PM. Manpreet was initially arrested and was released.

The trial Court observed as follows:-

"In the present case there was only statement of prosecutrix which was recorded in the court in which prosecutrix has named Manpreet Singh. There is no other additional evidence except the statement of prosecutrix. The statement of prosecutrix was also recorded by the Investigating Officer on the same lines but during investigation, the Investigating Agency found Manpreet Singh to be innocent. The order dated 27.05.2011 passed by Hon'ble High Court in CRM M-32821 of 2010 is placed on the file vide which FIR No.17 dated 25.01.2010 got registered by the prosecutrix against Sucha Singh was quashed by the Hon'ble High Court. Therefore, in view of above discussion this court is of the considered opinion that there is no sufficient evidence on the file to summon Manpreet Singh as an additional accused. Therefore, I find no merit in the application under section 319 Cr.P.C. and same is hereby dismissed."

The counsel for the petitioner urged that the additional accused had been named by the complainant in the First Information Report as well as in the statement made in the Court and the statement of the prosecutrix should have been accepted and serious allegations have been levelled.

The question would arise as to whether merely naming a person would be sufficient for the Court to exercise the power under Section 319 Cr.P.C. and what are the tests and guidelines for exercising the powers under Section 319(1) Cr.P.C. The matter was examined by the Apex Court in ***Hardeep Singh Vs. State of Punjab 2014 (1) RCR (Crl.) 623*** and it answered the questions in para no.110 of the judgment. While answering question IV, it held that the degree of satisfaction for summoning the additional accused had to be different.

It would be useful to reproduce Para nos. 98 and 99 of the judgment, which read 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.

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."

The prosecution was to lead stronger evidence than mere probability, so as to show the complicity of the additional accused. The trial Court had rightly rejected the application as it could not record its satisfaction that the additional accused should be summoned. Therefore, there is no scope for the Court to invoke the provision under Section 319 Cr.P.C.

The revision is dismissed.

05.05.2016

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(ANITA CHAUDHRY)
JUDGE