

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Revn. No. 329 of 2016 (O&M)

DATE OF DECISION: 08.02.2016

Smt. Sushil Soni

.....Petitioner

Versus

State of Haryana and others

.....Respondents

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. Whether reporters of local newspaper may be allowed to see judgment? (Yes/No)
2. To be referred to reporters or not? (Yes/No)
3. Whether the judgment should be reported in the Digest? (Yes/No)

Present:- Mr. Ajay Shekhawat, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

Crl. Misc. No. 4042 of 2016

This application has been filed for placing on record Annexure P-4.

Application is allowed and Annexure P-4 is taken on record.

Crl. Revn. No. 329 of 2016

The present revision petition has been filed to challenge impugned order dated 23.10.2015 passed by Additional Sessions Judge, Ambala, vide which, an application moved by the petitioner/complainant under Section 319 Cr.P.C. was dismissed.

Briefly, the facts of the case are that on the basis of complaint made by complainant-Smt. Sushil Soni, FIR No. 67 dated 4.3.2015 was

registered under Sections 376,384,506 IPC at Police Station, Ambala City. Challan was presented against accused-Manoj Kumar @ Rinku but respondents No.2 to 4 were found innocent and were kept in column No.2 of the challan. Thereafter, the complainant while appearing as PW-7 in the Court levelled specific allegations against respondents No.2 to 4 as a result of which an application moved by the prosecution under Section 319 Cr.P.C. for summoning respondents No.2 to 4 as an additional accused to face trial along with the main accused was dismissed by Additional Sessions Judge, Ambala vide its order dated 23.10.2015, which is now the subject matter of challenge in the present revision petition.

Learned counsel for the petitioner contends that respondents No.2 to 4 were wrongly declared innocent during investigation, whereas, specific allegations were levelled against them. The prosecutrix while appearing as PW-7 in the Court specifically stated that respondent No.2-Kiran, the wife of main accused-Manoj Kumar @ Rinku, in connivance with each other not only blackmailed her but even received jewellery from her by giving threats to disclose her obscene video and photographs. Respondent No.2 was also named in the FIR but intentionally she was not challaned by the investigating agency. The prosecutrix also made a statement that respondent No.4-Dinesh had forged entries in the visiting register of Hotel Plaza with an intention to aid accused-Manoj Kumar @ Rinku in commission of rape upon the complainant. Similar allegations of blackmailing and giving threat were also levelled against respondent No.3-mother of main accused-Manoj Kumar @ Rinku. He further submits that specific roles were attributed to respondents No. 2 to 4 by complainant (PW-7) but still the application has been dismissed. Learned counsel further contends that the impugned order has been passed without taking into consideration the allegations levelled in the FIR as well as the

statement of the prosecutrix. The summoning Court has not appreciated the fact that as per the medical evidence and statements of PWs, sufficient evidence was available against respondents No. 2 and 4 and there was every likelihood of their conviction along with the main accused. Learned counsel has also relied upon the judgment of Hon'ble the Apex Court in the case of **Hardeep Singh Vs. State of Punjab and others** 2014 (3) SCC 92, in support of his contentions.

Heard the arguments advanced by learned counsel for the petitioner and have also gone through impugned order dated 23.10.2015 and other documents available on the file.

The fact of lodging of FIR, presentation of challan as well as declaration of respondents No.2 to 4 as innocent during investigation are not disputed. It is also not disputed that after recording the statement of the prosecutrix, an application was moved under Section 319 Cr.P.C. for summoning respondents No. 2 to 4 to face trial along with accused-Manoj Kumar @Rinku but the same was dismissed on the ground that the prosecutrix has reiterated the same version, which was made in the complaint on the basis of which FIR was registered. In the final report filed under Section 173 Cr.P.C., no allegations were there with regard to forging of record of the hotel against accused-respondent No.4- Dinesh Kumar and no suggestion thereof was put in the cross-examination. It has also been admitted by Mukesh Kumar (PW-5), husband of the prosecutrix in his cross-examination that no complaint was ever made to the higher authorities. Similarly, no allegation was levelled against mother of accused-Manoj Kumar @ Rinku in the FIR and she came into the picture for the first time when the statement was made by the prosecutrix while appearing in Court as PW-7.

On perusal of statement of the prosecutrix and other evidence

available on record, it cannot be said that respondents No.2 to 4 were also involved in the commission of offence. Moreover, even in the challan, no allegation with regard to forging of entries in the record of the hotel was levelled against respondent No.4-Dinesh Kumar. Even no suggestion was put to him in cross-examination regarding the same. Respondents No.2 and 3 have been implicated in this case being wife and mother of main accused-Manoj Kumar @ Rinku, respectively. Even name of respondent No.3 is not mentioned in the memo of parties.

As per judgments of this Court as well as of Hon'ble the Apex Court, a person can be summoned under Section 319 Cr.P.C. in case some cogent and convincing evidence is there against the person, who is sought to be summoned. The issue regarding scope and extent of powers of the Court to arraign any person as an accused during the course of inquiry or trial in exercise of power under Section 319 Cr.P.C. has been settled by the Constitutional Bench of Hon'ble the Apex Court in **Hardeep's case (supra)**. Hon'ble the Apex Court in another judgment rendered in the case of **Babubhai Bhimabhai Bokhiria and anothers Vs. State of Gujarat and others** 2014 (5) SCC 568 has summarised the legal position in the following words:-

“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.](#).....”

For summoning a person as an additional accused under Section 319 Cr.P.C., the basic requirement is that it must appear to the summoning Court, on the basis of evidence, during inquiry or trial that the person who has not been made as an accused could be tried together with the accused, who is already facing trial. A small suspicion or doubt is not sufficient to summon such person as an additional accused. The Court has to exercise its powers sparingly as summoning of a person as an additional accused is a serious matter. When the investigating agency has thoroughly investigated the matter and has found the persons to be summoned as an additional accused innocent then some evidence must be available on record during trial or inquiry, which has not been considered by the investigating agency. Merely the statement of the complainant, ipso facto, cannot form the basis for summoning a person under Section 319 Cr.P.C. No doubt this power is extra ordinary in nature but the same is to be used sparingly. In case it appears to the summoning Court that such person is also involved in the commission of offence and has not been made accused by the investigating agency, he can be summoned to face trial

along with other accused.

From the aforesaid discussion as well as on perusal of the statement of the prosecutrix and the allegations levilled in the FIR, it is clear that no evidence is available on record, which would show the involvement of the persons sought to be summoned. 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.

February 08, 2016
pooja

(DAYA CHAUDHARY)
JUDGE