

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3461-2016

Date of Decision:- 20.10.2016

Usha

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Sukhdeep Parmar, Advocate
for the petitioner.

RITU BAHRI, J. (Oral)

Petitioner has filed the present revision petition against order dated 11.08.2016, passed by learned Additional Sessions Judge, Panipat vide which the application filed by the prosecution under Section 319 Cr.P.C. for summoning the respondent Nos. 2 to 4 as accused has been dismissed.

After taking into consideration the facts and all the contentions pertaining to appreciation of evidence, learned Additional Sessions Judge, Panipat, has dismissed the application, by virtue of impugned order dated 11.08.2016, which in substance is as under: -

“Applying the principles laid down in the said report to the present case, I may state that the case in question was set into motion on the complaint Ex.P1 of PW1 “A”. Therein, she has stated that on 26.01.2016, at about 8:00 p.m., she was returning from her factory. The accused Rajesh, Lala and one more person whose name she does not know, took her forcibly to a canal and committed rape on her. The complaint Ex.P1 is dated 27.01.2016 moved around 6:50 p.m. It is on record that

PW1 "A" was medico legally examined by Medical Officer of G.H. Panipat on 27.01.2016. At the time of such medico legal examination also, she is alleged to have stated to the concerned doctor that she was sexually assaulted by three persons Raju, Lala and an unknown person on 26.1.2016. It is also on record that on 27.01.2016, her statement was recorded by the police in the presence of Mrs. Pooja Arora, Legal Aid counsel. In the said statement also, she has inter alia stated that on 26.01.2016 at about 8:00 p.m. when she was returning from her factor to her house, Rajesh, Lala and one more person whose name she does not know took her to a canal and committed rape on her turn by turn. In all the said three documents, she no where names the above stated Rakesh and Sanju as the persons taking her to the alleged place and assisting the accused Rajesh and Lala etc. in committing the alleged offenses on her. Furthermore, in all the said three documents, she has categorically stated that she does not know the name of third person participating in the commission of the alleged offences. Therefore, till the time of execution of the said documents, she did not know the name of the alleged third person allegedly participating in the commission of alleged offences. It is nobody's case that between 26.01.2016 and 27.01.2016, the police conducted a test identification parade in the present case. It is also nobody's case that between the said period , PW1 "A" was told about the name of the third person or that she came to know about the name of third person between the said period. As against the said factual position, in her statement Ex.P2 recorded under Section 164 Cr.P.C., PW1 "A" has inter alia stated that three persons took her on a tempo to a jungle and committed rape on her whereas two other persons had caught hold of her. She then names the persons committing rape on her as Suresh and Lal. She also states in the said statement that the Kala her caught hold of her and she cannot disclose name of remaining two persons. In the said statement, she has nowhere named the accused Rajesh as committing offenses in question on her. Be that as it may, at the same time, she has nowhere stated in the said statement that the third person allegedly committing rape on her is the above stated Kala @ Jitender. She rather says that he had in fact caught hold of her. How she came to know about the name of said Kala @ Jitender on 27.01.2016 is not on record. No doubt in the said statement, she has also stated that Investigating Officer of the present case namely Gayatri Devi is pressurizing her not to name the said Kala and the persons catching hold of her. At the same time, she herself disclosed such names in the said statement. Once it is so, her allegation against the Investigating Officer is rendered meaning less at this stage especially when she does not say that she was stopped by the Investigating Officer or by the police from naming the remaining three persons in the complaint Ex.P1. The complaint Ex.P1 is a written document given by her to SHO of P.S. Women Cell Panipat. It is not stated to have been made before Mrs. Pooja Arora, Legal Aid Counsel and the facts told by her to the Medical Officer. Till date, it is mystry as to how she came to know about the name of the above said Kala @ Jitender as the third person committing the alleged offenses especially when she had a specific stand that she does not know his name. Still more, in the statement Ex.P2, she has nowhere

stated that the said Kala allegedly committed rape on her. She rather says therein that he had caught hold of her whereas one Suresh and Lala had committed rape on her.

9. *No doubt before this court PW1 "A" has categorically deposed that the accused Rajesh, Jitender @ Lala and the above stated Kala @ Jitender took her on a tempo to a canal wherein, the above stated Sanju and Rajesh were already present whereafter all of them committed rape on her turn by turn. However, such is not her case contained in the complaint Ex.P1, in her statement recorded by Mrs. Pooja Arora and in her MLR prepared by Medical Officer of G.H. Panipat. Rather, before this court, she has come up with an exaggerated/improved version of the alleged occurrence in which one of the alleged three assailants was not known to her. The accused Jitender @ Lala and Rajesh are already facing trial in the present case. The identify of the above stated Kala @ Jitender, still, is surrounded by doubt. During investigation and on its completion, the prosecution has found the above stated Kala @ Jitender, Sanju and Rajesh as not involved in commission of the alleged offenses. In the totality of the facts and circumstances of the present case, such conclusion does not appear to be contrary to the documents/evidence on record. So far as deposition of PW1 "A" is concerned, as stated above, it appears to have exaggerated/improved the prosecution case in respect of identity of the said Kala @ Jitender, Sanju and Rakesh son of Balbir as the persons committing the alleged offenses. How PW1 "A" came to know about names of the above stated Rakesh and Sanju is also not on record. In the totality of the facts/circumstances of the present case, therefore, the documents and evidence on record, in my considered opinion, do not qualify a test of more than a prima facie case against the said three persons namely Jitender @ Kala, Rakesh and Sanju to summon them as additional accused in the present case under Section 319 Cr.P.C. to face trial with the accused already facing trial in it.*

10. *For the reasoning given an discussion made in the preceding portion, the above said application dated 29.07.2016 filed by the prosecution under Section 319 Cr.P.C. for summoning the above said three persons as additional accused is hereby dismissed."*

Meaning thereby, the learned Additional Sessions Judge, Panipat, has examined the matter in right perspective, recorded the cogent grounds and correctly dismissed the application filed by the prosecution.

Learned counsel for the petitioner did not point out any material/reasons, much less cogent, so as to warrant any interference in the impugned judgment.

Such order, containing valid reasons, cannot possibly be

interfered with by this Court, in exercise of limited revisional jurisdiction of this Court under Section 401 Cr.P.C., unless and until, the same is illegal, perverse and without jurisdiction. Since, no such patent illegality or legal infirmity has been pointed out by the learned counsel for the petitioner, so, the impugned order deserves to be and is hereby maintained in the obtaining circumstances of the case.

In the light of aforesaid reasons, as there is no merit, therefore, the instant revision petition is hereby dismissed as such.

October 20, 2016
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(**RITU BAHRI**)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	No