

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

Crl. Revision No. 3936 of 2016 (O&M)
Date of decision: 23.11.2016

Meena Rani

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Parveen Kumar Rohilla, Advocate
for the petitioner.

JAISHREE THAKUR, J.

Crl. Misc. 33780 of 2016

For the reasons stated in the application, delay of 16 days in
filing the revision is condoned.

Application stands disposed of.

Main case

The instant revision has been preferred to challenge the order
dated 8.7.2016 passed by the Additional Sessions Judge, Panipat, dismissing
the application of the petitioner filed under Section 319 of the Code of
Criminal Procedure (for short '**the Cr.P.C.**') for summoning the private
respondents No. 2 and 3 herein.

The facts giving rise to the instant revision are: that an FIR No.
486 dated 26.10.2015 was registered at the behest of Chander Bhan, father
of the petitioner herein, alleging that his elder daughter Meena Rani, aged
20 years, educated upto 10th class, had been taken away by Ravi @ Khanna

son of Kishan Chand, Caste Rajput of village Rajjapur, District Panipat. In the proceedings under Section 164 of the Cr.P.C. the prosecutrix alleged that the accused Ravi gagged her mouth and with the help of Sunny took her outside of her village in a vehicle standing parked there, in which his relative Seeta was also sitting. She was administered some intoxicated substance and she became unconscious. Thereafter, all the persons took her to Gaziabad and when she gained consciousness, she saw the accused Ravi, Sunny and Seeta and all the above stated persons obtained her signatures on some blank papers and threatened to kill her. It is further alleged that Ravi forcibly committed rape on her against her will and Ravi, Sunny and Seeta remained with her and threatened to kill her in case this fact is disclosed to any one.

On the basis of the above said statement, an application was moved under Section 319 Cr.P.C. for summoning Sunny son of Suraj Bhan and Seeta as additional accused to face trial in the case in which Ravi accused is already facing trial. The said application came up for hearing and the same was dismissed by the Additional sessions Judge, Panipat, while taking note of the fact that the prosecutrix and the accused Ravi had applied for protection before the learned District & Sessions Judge, Panipat in which the prosecutrix had suffered a statement on 4.11.2015 to the effect that she had performed marriage with Ravi on 26.10.2015. The marriage was performed at Arya Samaj Vivah Mandir, Village Razapur, Ghaziabad and that she feared threat to her life as well as to the life of Ravi at the best of her parents and brothers. This statement was recorded almost a week after the marriage had been performed. Thereafter, on 6.11.2015, the petitioner

suffered another statement before the learned District Judge stating that she has committed a mistake by marrying Ravi and after having realized her mistake, she did not want to reside with Ravi and wanted to go back with her parents. Consequently, she also made a statement that she wanted to withdraw her petition seeking protection. Thereafter, the police produced the petitioner before the concerned area Magistrate in which her statement was recorded under Section 164 Cr.P.C. making allegations against Sunny and Seeta.

The Additional Sessions Judge, while dismissing the application under Section 319 Cr.P.C. observed that the prosecutrix was major, aged 20 years, who had suffered two statements first on 4.11.2015 and the second on 6.11.2015, but nowhere she had made any allegations about the complicity of private respondents No. 2 and 3 herein in the commission of offence, neither any such allegations had been made in the petition that had been filed for seeking protection before the Sessions Judge, Panipat. Based on the fact that marriage had taken place, by relying upon the marriage certificate and the photographs showing her putting garlands around the neck of Ravi, the Additional Sessions Judge dismissed the application seeking summoning of Sunny and Seeta as additional accused.

Learned counsel for the petitioner submits that the two statements recorded before the District & Sessions Judge on 4.11.2015 and 6.11.2015 had been made under fear of the accused Ravi and that in the deposition under Section 164 of Cr.P.C. specific allegations had been made against Sunny and Seeta. Since the private respondents were hand in glove in the commission of offence and as such they ought to have been

summoned to face trial.

I have heard learned counsel for the petitioner and perused the record of the case.

Undisputedly, any person can be summoned as additional accused under Section 319 Cr.P.C. The Section, as read, states that if in the course of inquiry, it appears from the evidence that any person not being accused has committed an offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed. This power of the Court to summon any person as additional accused can be exercised during the inquiry or when material comes before the Court. Moreover, the court has to be satisfied from the evidence before it and summoning should not be on mere probability of complicity of the person sought to be summoned. In **Hardeep Singh etc. Versus State of Punjab and others AIR 2014 Supreme Court 1400**, a Constitution Bench of the Apex Court, while taking into consideration several judgments rendered by the Apex Court itself, pertaining to the power of the Courts under Section 319 of the Code to summon a person as accused, held that such power is discretionary and extraordinary power, which is to be exercised sparingly and only in those cases where circumstances of the case so warrants, when strong and cogent evidence occurs against such a person from the evidence led. The Constitution Bench also went on to hold that test which has to be applied is one which is more than prima facie case. It was further held that the satisfaction of the court should be such that the evidence if goes un rebutted

would lead to conviction.

Applying the test as laid down on the aforesaid case, the Additional Sessions Judge, dismissed the application.

A perusal of the impugned order does not show any infirmity therein. In the case in hand, the petitioner herein is a young lady of 20 years, who performed a marriage with the accused Ravi on 26.10.2015, stayed with him for more than a week and thereafter appeared before the District & Sessions Judge, Panipat, seeking protection for herself and her husband from her parents and brothers. While seeking protection, the petitioner herein relied on the marriage certificate that had been issued and also showed the court the photographs of her performing the marriage with Ravi. In the protection petition, a query was put to the petitioner by the District & Sessions Judge, Panipat, if she has any source of income, to which she replied that she has no source of income and she would have no place of shelter in case she is ultimately not properly kept by her husband. Thereafter, the court thought it appropriate to ask the husband to deposit a sum of ₹2 lakhs in the name of the petitioner, but he expressed his inability to do so. Finding that his intention was not bonafide, the girl was sent to the Nari Niketan, Karnal and her parents were called for 6.11.2015, on which date, she decided to go back with her parents. What is germane to notice is that the petitioner did not at any point of time make a statement that Sunny and Seeta were also involved in the commission of the alleged offence. In fact, she freely discussed with the court that she needed extra protection as she would suffer annoyance at the hands of her parents and would have no place to go in case she is not properly maintained by her husband. So, the

argument raised that she was fearful of her life at the hands of Ravi, Sunny and Seeta is an argument that is wholly unsustainable. If the petitioner was free enough to express her apprehension that she would have no place to shelter in case she is not properly maintained by her husband, she could have also expressed her fear at that point of time. Rather in her statement made on 4.11.2015, she expressed threat to her life and that of her husband at the hands of her parents and brother. Thus, the statement suffered under Section 164 Cr.P.C. seems to be an improvement and afterthought and that is why after investigation, the police did not deem it fit to array Sunny and Seeta as accused in the FIR. Moreover, Sunny and Seeta are not blood relatives of the accused and neither are living in the village of the petitioner herein and there could be no motive attributed to them in the instant case.

Therefore, in the totality of the circumstances noticed above, this revision is dismissed as there is no infirmity or perversity in the impugned order.

23.11.2016

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(JAISHREE THAKUR)

JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No