

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Revision No. 784 of 2015

Date of decision : 18.01.2016

Pawan

... Petitioner

versus

State of Punjab and another

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. A.K. Walia, Advocate
for the petitioner

Mr. K.S. Aulakh, AAG Punjab

Mr. B.D. Sharma, Advocate
for respondent No. 2

ANITA CHAUDHRY, J.(ORAL)

The petitioner has been summoned under Section 319 Cr.P.C. Allegations had been levelled against Sandeep and Raj Kumar @ Rajesh of rape. The allegations against the petitioner were that when he came to know of the occurrence he alongwith Sonu used to whistle at her and some time caught her hand and some time pulled her chunni.

Learned counsel for the petitioner contends that the petitioner can not be tried with the main accused as the act attributed to the petitioner is of completely different transaction and not in continuation of the occurrence alleged against the main accused. He further contends that petition filed by Sonu @ Ramesh Kumar had been allowed on 29.01.2015 against whom similar allegations were made.

Learned counsel for the petitioner refers to ***Balbir v. State of***

Haryana and another reported as AIR 2000 Supreme Court 11 and Amar

Singh and another v. The State reported as AIR 1954 Punjab 106.

As per learned counsel for the petitioner, only those persons who are covered within the parameters of Section 223 of the Cr.P.C. can be tried and charged jointly. Section 223 of the Cr.P.C. is in the following terms:-

“223. What persons may be charged jointly. The following persons may be charged and tried together, namely:-

- (a) persons accused of the same offence committed in the course same transaction;*
- (b) person accused of an offence and persons accused of abetment of, or attempt to commit, such offence;*
- (c) person accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;*
- (d) persons accused of different offences committed in the course of the same transaction;*
- (e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last-named offence;*
- (f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860). or either of those sections in respect of stolen property the possession of which has been transferred by one offence;*
- (g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin and persons*

accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges: Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.”

Looking at the accusation set up in the complaint, I find that the petitioner did not commit the same offence in the case of same transaction and could not be tried jointly with Sandeep and Raj Kumar.

Keeping in view the exposition of law it has to be held that the present petitioner does not come within any of the categories mentioned in Section 223 of the Code of Criminal Procedure. Consequently he cannot be summoned to face trial in the present case. This, however, cannot mean that an independent action cannot be brought against him for the actions attributed to him.

With these observations this petition is allowed and the order summoning the petitioner to face charge with the other accused relating to the rape of the prosecutrix is set aside.

(ANITA CHAUDHRY)
JUDGE

January 18, 2016

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