

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No. 94 of 2016

DATE OF DECISION: 05.05.2016

Ram Kumar

.....Petitioner

Versus

State of Haryana

.....Respondent

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

1. **Whether reporters of local newspaper may be allowed to see judgment? (Yes)**
2. **To be referred to reporters or not? (Yes)**
3. **Whether the judgment should be reported in the Digest? (Yes)**

Present:- Mr. Lekh Raj Sharma, Advocate
for the petitioner.

Mr. Sanjay K. Saini, AAG, Haryana.

Mr. Parmod K. Chauhan, Advocate
for the complainant.

DAYA CHAUDHARY, J.

The present revision petition has been filed to challenge order dated 3.10.2015 passed by Additional Sessions Judge, Kurukshetra, whereby, the application moved by the prosecution under Section 319 Cr.P.C. for summoning the petitioner as an additional accused to face trial along with other accused has been allowed.

Briefly, the facts of the case are that FIR No. 44 dated 21.2.2015 was registered under Sections 376-D, 323, 506 IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 at Police Station Ladwa on the basis of complaint made by the victim, wherein, she

had stated that she was 14 years of age at the time of occurrence. On 20.2.2015, there was marriage in her neighbourhood and many relatives of her neighbours had come for the marriage. At about 7.00 pm, when she went to fetch water from the tap installed in the gali in front of her house, one Parveen, brother of her aunty, namely, Jaswinder Kaur was already present there along with his two friends. All the three persons caught the victim from her arms and forcibly pulled her inside the shuttered house of Jaswinder Kaur. She raised hue and cry but her mouth was shut with force. All the three persons committed rape upon her against her wishes one by one, gave severe beatings to her and even threatened not to tell with regard to the incident to any person. At first, out of fear, she did not tell with regard to the incident to anyone but subsequently she disclosed all these facts to her grandmother. Ultimately on the basis of complaint made by the victim, aforesaid FIR was registered and thereafter the statement of the victim under section 164 Cr.P.C. was also recorded by JMJC, Kurukshetra on 24.2.2015. Again the statement of the victim was recorded on 4.3.2013 by ASP, Kurukshetra in the presence of her father Dalwinder Singh and Medical Officer, Community Health Centre, Ladwa. The investigation of the case was carried out and challan was presented against accused-Parveen Kumar and Mangat @ Mangta under Sections 376-D, 323, 506 IPC and Section 6 of POCSO Act. Charges were framed by the trial Court on 7.4.2015. After recording the statements of the victim and her father as PW-3 and PW-4, respectively, an application under Section 319 Cr.P.C. was moved for summoning the petitioner as well as accused Rajesh @ Raju by the complainant through Public Prosecutor, which was allowed qua the present petitioner-Ram Kumar vide order dated 3.10.2015, which is the subject matter of challenge in the present petition.

Learned counsel for the petitioner contends that in the initial

statement made by the complainant before the police, the petitioner was not named. His name figured only in the statements made by the victim and her father before the trial Court during trial. The victim has stated in her cross-examination that she identified the petitioner while he was going on road, whereas, when she made a statement before the ASP, she had categorically stated that she would not be able to identify the accused even if they come present before her. The petitioner was not even named in the disclosure statements made by co-accused, who are facing trial. The petitioner has been implicated in this case being an Advocate appearing against the grandfather of the victim in a Numberdari case filed by Rajesh Kumar. There are different versions by the prosecutrix on different occasions. Serious contradictions in the statements of the victim as well as her father are also there and as such no prima facie case is made out against the present petitioner. 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 (1) RCR (Criminal), 623, wherein, it has been held that power under Section 319 Cr.P.C. can be exercised at the time of completion of examination-in-chief and the Court does not need to wait till it is tested on the anvil of cross-examination.

Learned counsel for the respondent-State as well as complainant oppose the submissions made by learned counsel for the petitioner by stating that from the very beginning three accused persons were named by the victim levelling specific allegation that rape was committed by them one by one. Learned counsel further submits that the order of summoning is well reasoned and no interference is required. The victim as well as her father were cross-examined at length and their testimony could not be shattered. Minor contradictions and discrepancies in the statement are not material.

Heard the arguments advanced by learned counsel for the parties and have also gone through the allegations levelled in the FIR, statements of the victim as well as of her father, the application moved for summoning of the petitioner and also the order of summoning.

The factum of lodging of the FIR and recording of the statements of the victim and her father is not disputed. After recording the statements of the victim and her father, an application was moved under section 319 Cr.P.C. by the complainant through Public Prosecutor which was allowed by Additional Sessions Judge, Kurukshetra vide order dated 3.10.2015, which is subject matter of challenge in the present petition.

For decision of the controversy in hand, Section 319 Cr.P.C. is necessary, which is reproduced as under:-

“319. Power to proceed against other persons appearing to be guilty of offence.---(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any 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.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then --

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard.

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

As per provisions of Section 319 Cr.P.C., the Court can exercise its discretion in case the Court arrives at the satisfaction that there exists a possibility that the accused so summoned is likely to be convicted. For summoning additional accused there must be legal evidence on record showing involvement of any person other than the accused already facing trial before the trial Court for commission of alleged offence. It is for the Court to record a reasonable satisfaction from the evidence collected during trial. In case the Court comes to the conclusion that the person sought to be summoned has also committed an offence other than the person/persons already facing trial.

The Hon'ble Supreme Court in **Michael Machado and Anr. Versus Central Bureau of Investigation and Anr.** 2000(1) AcrR. 747 (SC): 2000(SC) (Cri) 609, has observed that basic requirement for invoking the above section is that it should appear to the Court from the evidence collected during trial or in the inquiry that some other person who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the Court entertained some doubt from the evidence, about the involvement of another person in the offence. In other words, the Court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed offence. Second is that for such an offence, that other person

could as well be tried along with already arraigned accused.

Hon'ble the Apex Court in **Hardeep Singh's case (supra)** framed five questions and sum up the following conclusions:-

Question Nos.1 & III

Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND

Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In **Dharam Pal's** case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused. Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power

under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the chargesheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No. II

Q.II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. IV

Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for

summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No.V

Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not chargesheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh.

In the present case, the petitioner has been summoned after recording the statements of the victim as well as of her father. The summoning Court has specifically stated that role of the present petitioner has been categorically mentioned in the statements of victim as well as her father-Dalwinder Singh while appearing as PW-3 and PW-4,respectively.

Their statements are consistent and convincing. It has also been brought to the notice of the Court that after deposition before the trial Court, the victim had died due to burn injuries and FIR No. 196 dated 24.7.2015 has been registered under Sections 323,452,506 IPC at Police Station Ladwa, District Kurukshetra against eight persons. The victim has specifically stated in her statement that when she visited the Court for filling the form for money, accused-Ram Kumar (the present petitioner) was going on road and she identified him to be the accused who had committed rape upon her. The victim told this to her father and an inquiry was made with regard to his name, father's name and other particulars. In cross-examination, certain suggestions were also put by the defence counsel to the victim that the petitioner was named because of grudge against him as he appeared as an Advocate in the Numberdari case between her grandfather and Rajesh Kumar but her deposition could not be shattered. Thus, from the very beginning it was the stand of the victim (since deceased) that there were three persons who committed rape upon her one by one.

In view of the above, no ground is made out to interfere in the well reasoned order dated 3.10.2015 passed by the Additional Sessions Judge, Kurukshetra and the present petition being devoid of any merit is hereby dismissed.

May 05, 2016
pooja

(DAYA CHAUDHARY)
JUDGE