

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

**CRR No. 2042 of 2017(O&M)
Date of Decision: 28.09.2017**

Subhashini minor through her mother Mahadevi

..... Petitioner

Versus

State of U.T. Chandigarh and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Rajesh Bhateja, Advocate
for the petitioner.

LISA GILL, J(Oral).

The petitioner is aggrieved of order dated 07.01.2017, passed by the learned Additional Sessions Judge-cum-Special Court, Chandigarh, whereby application under Section 319 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for summoning respondents no.2 and 3 to face trial as additional accused in FIR No. 149 dated 01.08.2016, has been dismissed.

Brief facts of the case are that FIR No. 149 dated 01.08.2016, was registered against five persons, who were duly named as Baldev (Balwant), Vikas, Lucky, Rodu and Manjit. As per allegations in the FIR, the victim was working as a domestic help and when she was returning back home from her work on 19.07.2016, at about 12:00 noon, a vehicle came from the rear side of the park at Sector-50, Chandigarh. The vehicle slowed down and two boys got out of the car and forcibly pushed her inside the vehicle. A piece of cloth was put on her mouth and she lost consciousness. On regaining her senses, she saw accused-Lucky pouring water on her face while she was sitting on the rear seat of the vehicle. Accused-Lucky, Manjit

and Vikas were sitting by her side. Mukesh was sitting on the front seat and accused-Baldev (Balwant) was driving the vehicle. As per the victim, her person was violated by all the above said accused. Obscene photographs were taken and she was threatened and intimidated. She was left behind the college in Sector-50, Chandigarh. Thereafter, on 26.07.2016, the victim was again picked up by the accused and taken forcibly in a vehicle. Thereafter, the present FIR was lodged.

It is to be noted that the victim has not named respondents no.2 and 3 at the outset neither has she mentioned or raised any allegations *qua* them in her statement under Section 164 Cr.P.C., before the Magistrate. However, when she appeared to testify before the learned trial Court, she stated that when she was picked up on 26.07.2016, accused-Lucky threatened that she would be eliminated, if she disclosed about the incident to anyone and did not withdraw the case lodged by her against respondents no.2 and 3. It is to be noted that FIR No. 197 dated 03.06.2015, under Section 306, 34 IPC, was registered against respondents no.2 and 3 in regard to the death of the victim's brother, who was working as a helper with said respondents. As per the allegations in the said FIR, respondents no.2 and 3 had slapped the victim's brother, due to which he committed suicide. Learned trial Court on going through the facts and circumstances of the case, dismissed the application under Section 319 Cr.P.C.

I have heard learned counsel for the petitioner and have gone through the file with his able assistance.

It is not in dispute that respondents no.2 and 3 were not named at the outset or in the statement of the victim under Section 164 Cr.P.C. She for the first time before the learned trial Court made a passing reference that accused-Lucky threatened to eliminate her, if she did not withdraw her case

against Ambar Kapoor-respondent no.2 and Akash Kapoor-respondent no.3. There is no explanation whatsoever as to why such allegation has not surfaced at an earlier point of time if such a threat was meted out to her on 26.07.2016 itself.

It is a settled position that for summoning one as an additional accused to face trial, there has to be something more than *prima facie* evidence though less than clinching evidence which would inevitably lead to the conclusion of guilty of the said accused. Reference can be gainfully be made to the judgment of the Hon'ble Supreme Court in **Hardeep Singh v. State of Punjab, 2014(1) RCR(Crl.) 623.**

In the facts and circumstances of the case, learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 07.01.2017 passed by the learned Additional Sessions Judge-cum-Special Court, Chandigarh, which calls for interference by this Court in exercise of jurisdiction under Section 482 Cr.P.C.

There is a delay of 78 days in filing of this petition. As the matter has been dealt with on merits, adjudication of this application is rendered academic.

Accordingly, this petition is dismissed.

28.09.2017
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No