

CRR No. 2072 of 2017

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In the High Court of Punjab and Haryana at Chandigarh

CRR No. 2072 of 2017

Date of Decision:2.6.2017

Neki Ram

---Petitioner

vs.

State of Haryana and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Ravinder Hooda, Advocate
for the petitioner

Rekha Mittal, J.

The present petition directs challenge against order dated 15.4.2017 passed by the Additional Sessions Judge, Sirsa whereby application filed under Section 319 of the Code of Criminal Procedure (in short “Cr.P.C.”) for summoning Varinder @ Sonu son of Jagjeet Singh as an additional accused to face trial alongwith co-accused Sandeep Kumar for offence under Sections 363, 366-A, 506 of the Indian Penal Code (in short “IPC”) and 6 of the Protection of Children from Sexual Offences Act, 2012 registered vide FIR No.356 dated 27.10.2015 at Police Station, Dabwali, has been dismissed.

Counsel for the petitioner/complainant has submitted that as the prosecutrix, daughter of the complainant has raised specific allegations

against Varinder @ Sonu for subjecting her to rape, the trial court has committed a serious error rather illegality by dismissing the application for summoning Varinder @ Sonu as additional accused. It is further submitted that reasoning adopted by the trial court for rejecting claim of the prosecution to summon the proposed accused cannot stand the test of judicial scrutiny.

I have heard counsel for the petitioner, perused the paper book particularly various annexures appended with the petition.

Before advertng to the submissions made by counsel for the petitioner, it is appropriate to take note of relevant extract of impugned order quoted thus:-

“In the complaint dated 27.10.2015 Ex. P7 of the complainant Neki Ram father of Vidya Devi (PW8), there is no allegation either against accused Sandeep or against accused Varinder alias Sonu. Vidya Devi alias Badlo (PW8) filed her complaint dated 16.3.2016 Ex. P17 with Superintendent of Police, Sirsa after about five months of the lodging of the FIR by her father Neki Ram levelling allegations against Sandeep and also against Varinder alias Sonu. Her statement under section 164 Cr.P.C. Ex. P18 was recorded on 25.2.2016 and not on 26.2.2016 as stated by her in her complaint Ex. P17. According to her statement Ex. P18 under Section 164 Cr.P.C. dated 25.2.2016, she had left her house out of her free will about 2/3 months back and that she had gone to Anupgarh alone and that she earned her livelihood there by doing labour work and that she had gone out of her free will and without any pressure from any side by leaving her house and that now she wanted to go with her

parents and wanted to live with them. In her statement Ex. P18, there is no allegation either against the accused Sandeep or against Varinder alias Sonu. In her statement under Section 161 Cr.P.C. dated 29.4.2016, recorded after about one and half months of her complaint Ex. P17 dated 16.3.2016, the only allegation against the accused Varinder alias Sonu is that accused Sandeep and Varinder alias Son took her to Pilibanga (Rajasthan) and that after leaving them Varinder alias Sonu came back. According to report under Section 173 Cr.P.C., during the investigation of the Investigating Officer and during the verification by the DSP, Dabwali, Varinder alias Sonu was not found to be involved in the case.”

Hon'ble the Supreme Court of India in the Constitution Bench judgment *Hardeep Singh vs. State of Punjab and others 2014(1)RCR (Criminal) 623* while answering question No. IV “What is the degree of satisfaction required for invoking the power under Section 319 Cr.P.C.?” has held in para 98 and 99, reads as follows:-

“98. Power under [Section 319](#) Cr.P.C. is a discretionary and an extra- ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

99. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination,

it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under [Section 319 Cr.P.C.](#) In [Section 319 Cr.P.C.](#) the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under [Section 319 Cr.P.C.](#) to form any opinion as to the guilt of the accused."

Reverting to the case at hand, counsel for the petitioner has not disputed correctness of factual scenario taken note of by the trial court. In her first version recorded under Section 164 Cr.P.C. on 25.2.2016, the prosecutrix has not attributed any culpability to Varinder @ Sonu. In her statement recorded under Section 161 Cr.P.C., she has again not attributed any role to Varinder @ Sonu in regard to her being subject to rape. Statement of the prosecutrix under Section 161 Cr.P.C. was recorded subsequent to lodging of complaint dated 16.3.2016 (Ex. P-17), made by the complainant subsequent to recording her statement under Section 164 Cr.P.C.

On a query raised by the Court, counsel for the petitioner has fairly informed that there is no medical examination of the prosecutrix with regard to alleged sexual assault upon her by accused Varinder @ Sonu.

Varinder @ Sonu is alleged to have committed rape upon the prosecutrix prior to her having gone missing from the house which led to registration of complaint by her father Neki Ram on 27.10.2015. The prosecutrix has levelled allegation only against accused Sandeep with regard to occurrence dated 22.10.2015 onwards when she stayed away from the house with Sandeep as a result of which she became pregnant and delivered a child.

The prosecutrix is the 8th witness examined in the case. In case Varinder @ Sonu is summoned to face trial, Sandeep has to face de novo trial without any fault attributable to him. As has been noticed hereinbefore, power under Section 319 Cr.P.C. is discretionary and extra ordinary in nature. It is to be exercised sparingly where strong and cogent evidence occurs against a person from the evidence led before the court. Such a power should not be exercised in a casual and cavalier manner. Scope of intervention in exercise of revisional jurisdiction of the court is limited. Keeping in view the facts and circumstances discussed hereinbefore, I do not find any reason to interfere in the impugned order.

For the foregoing reasons, the petition fails and is accordingly dismissed.

(Rekha Mittal)
Judge

2.6.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No