

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

**CRR No. 3463 of 2017
Date of Decision: 04.10.2017**

Afseena

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Inderjit Sharma, Advocate
for the petitioner.

LISA GILL, J(Oral).

Petitioner is aggrieved of order dated 29.07.2017, passed by the learned Additional Sessions Judge, Palwal, whereby application under Section 319 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for summoning respondents no.2 and 3 namely Munsarif @ Sharif Mohammad and Anwar to face trial as additional accused in FIR No. 31 dated 12.11.2015, Under Sections 365, 376 IPC, Police Station Women Palwal, District Palwal, has been dismissed.

Brief facts of the case are that above said FIR was registered on the statement of the petitioner on 12.11.2015 (Annexure P-1). The petitioner admittedly has named one Asruddin as an accused. Asruddin is alleged to have purchased a buffalo from the complainant. He paid about ₹2000/-/3000/- only and promised to pay the rest of money later. Asruddin took the complainant's mobile number and often visited her house. He promised to

marry the complainant who is a widow and look after her children. He raped the complainant on this pretext in her house itself. She reported the matter to her brother. Asruddin, it is stated refused to return her money. He called her outside the village on 04.11.2015. She went to meet him and saw two other persons standing near the Bolero vehicle along with Asruddin. All of them made her sit in the vehicle forcibly. She raised alarm and the villagers reported the matter to her brother. Her brother followed the vehicle in order to rescue her and on seeing her brothers, Asruddin fled from the spot. The abovesaid FIR was registered on this statement of the complainant. In her statement under Section 164 Cr.P.C., (Annexure P-2), the petitioner reiterated her allegations against accused-Asruddin. The complainant did not name any other person as an accused at this stage as well. Respondents no.2 and 3 did not figure in her statement under Section 164 Cr.P.C.

Petitioner while deposing before the learned trial Court on 22.04.2016 as PW-2, for the first time, stated that one of the unknown persons accompanying Asruddin when she was sought to be kidnapped on 04.11.2015 was respondent no.3-Anwar. Petitioner's brother while deposing as PW-12 before the learned trial Court on 06.02.2017 stated that Asruddin was accompanied by respondents no.2 and 3 on 04.11.2015 when his sister was forcibly abducted. The allegations of violation of the petitioner's person have been raised against Asruddin only.

In the light of the statements of the petitioner (PW-2) and her brother (PW-12), application under Section 319 Cr.P.C., was moved for summoning respondents no.2 and 3 to face trial as additional accused in the above said case. The same has been dismissed by the learned trial Court vide impugned order dated 29.07.2017.

Aggrieved therefrom, the present revision petition has been

filed.

Learned counsel for the petitioner vehemently argues that the complainant as well as her brother who is a witness of the incident which took place on 05.11.2015 have specifically stated that respondents no.2 and 3 are involved in the commission of the offence in question. Moreover, the said respondents were in-fact arrested, but were discharged by the police after having been found innocent during investigation. Therefore, the impugned order is liable to be set aside. Respondents no.2 and 3 be summoned as additional accused in this case.

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

There is no dispute, that the petitioner or her brother did not name respondents no.2 and 3 at any point of time prior to recording of their statements on 22.04.2016, 06.02.2017 and 06.03.2017. It is to be noted that the petitioner in her cross-examination has admitted that respondent no.3-Anwar was well known to her since the last 15 years. There is no explanation whatsoever as to why the said accused was not named at an earlier point of time if he was well known to her. Similarly, in case the petitioner's brother had identified the said accused at the outset when the complainant is alleged to being taken forcibly in a car, there is no plausible reason for not disclosing their identity. Contention of learned counsel for the petitioner that the said respondents were in-fact arrested and thereafter discharged is totally unsubstantiated by anything on record. There is nothing to indicate the arrest of respondents no.2 and 3 and having being found innocent on investigation.

Learned counsel for the petitioner is unable to point out any illegality, infirmity or perversity in the impugned order dated 29.07.2017,

passed by the learned Additional Sessions Judge, Palwal, which calls for interference by this Court in exercise of jurisdiction under Section 482 Cr.P.C.

Accordingly, this petition is dismissed.

04.10.2017
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No