

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

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Crl. Revision 72 of 2017
Date of decision: 15.05.2017

Balwinder Kaur *Petitioner*

Versus

State of Punjab and others *Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Arvind Kashyap, Advocate
for the petitioner

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Rekha Mittal, J.

The present petition directs challenge against order dated 28.11.2016 passed by the Additional Sessions Judge, Gurdaspur whereby application under 319 of the Code of Criminal Procedure (in short, Cr.P.C.) for summoning the additional accused has been dismissed.

FIR No. 136 dated 20.09.2015 for offence punishable under Sections 363 and 366-A read with Section 120-B of the Indian Penal Code (in short, IPC) was registered at Police Station Civil Lines, Batala at the behest of father of the alleged kidnapped girl (name kept concealed). On completion of investigation, challan was presented against Palwinder Singh son of Balraj Singh, Balraj Singh son of Inder Singh and Jasbir Kaur wife of Balraj Singh. The accused before the trial Court were charge sheeted for various offences. The prosecutrix appeared in the witness box, examined and partly cross examined and thereafter application under section 319 Cr.P.C. was filed for summoning as many as ten persons as additional

accused, detailed in the application and the same came to be dismissed by the trial Court vide order dated 28.11.2016.

Counsel for the petitioner has submitted that in view of the facts elicited from the statement of prosecutrix recorded during trial, additional accused are required to be summoned to face trial with the accused already before the Court.

I have heard counsel for the petitioners, perused the paper book and statement of the prosecutrix recorded under Section 164 Cr.P.C., a copy whereof has been sent by the trial Court in pursuance of order dated 28.02.2017 passed by this Court. The learned trial Court has noticed that no allegation had been levelled in the statement of victim before the police against any of the accused now sought to be summoned. Perusal of records also shows that the victim (name kept concealed) refused to go with her parents and rather stated that she wants to go to her in-laws house with accused Palwinder Singh. Accordingly, she was sent to Nari Niketan. Subsequently, on an application she was again called to the Court where her statement was recorded by Shri G S Sekhon, JMIC, Batala on 02.11.2015. Again, she did not level any allegation against any of the accused and rather stated that accused Palwinder Singh had not committed any illegal act. She even refused to get herself medico legally examined. She was asked to re-think about the matter and agreed to go with her parents on 02.11.2015. Accordingly, custody of victim was handed over to her parents on 02.11.2015. Thereafter, present statement was made by her in the Court on 13.10.2016 i.e. after about one year of the occurrence. It seems that present statement was made by the victim against the petitioner under influence of her parents. All the allegations levelled against the accused now sought to

be summoned under section 319 Cr.P.C. are improvement in her statement which cannot be considered.

I have gone through statement of the prosecutrix recorded by the Judicial Magistrate Ist Class, Batala on 20.10.2015 under Section 164 Cr.P.C.. Perusal thereof would clearly evident that the prosecutrix never referred to any of the persons sought to be summoned as additional accused rather she did not allege anything against accused Palwinder Singh and even expressed her apprehension of torture from her parents and desired to go to *Nari Niketan*.

As per the settled position in law, power under Section 319 Cr.P.C. is extra-ordinary in nature, to be used sparingly. However, Hon'ble the Supreme Court of India in the judgment by a Constitution Bench ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92*** has laid down the test to be satisfied for summoning additional accused namely the materials on record prove complicity of the proposed accused more than of a prime facie. Keeping in view stand of the prosecutrix in her initial statements before the Police and the Judicial Magistrate Ist Class, I do not find any error much less illegality in the manner in which the trial Court has exercised its discretionary jurisdiction.

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

(Rekha Mittal)
Judge

15.05.2017
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Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No