

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.202

CRM-M-1539-2015 (O&M)

Date of decision : 24.09.2018

Maya Devi

..... Petitioner

VERSUS

State of Haryana

..... Respondent

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Gaurav Mohunta, Advocate, for the petitioner.

Mr. D.R. Singla, DAG, Haryana.

SUDHIR MITTAL, J. (Oral)

The petitioner has been summoned as an additional accused on an application filed under Section 319 Cr.P.C. She has challenged the order of the trial Court dated 13.06.2014 as well as order dated 01.12.2014, whereby her revision petition was rejected by the learned Additional Sessions Judge, Narnaul.

Learned counsel for the petitioner submits that the only role attributed to the petitioner in the FIR is of stealing two gold rings and two gold bangles. In the final report filed under Section 173 Cr.P.C, the police found that theft of the said articles was not proved and thus, kept the petitioner in column No.2. Thereafter, the complainant was examined as PW3 and she reiterated her statement made before the police. Mere reiteration of the statement made before the police at the time of recording evidence, is not sufficient for exercise of powers under Section 319 Cr.P.C. He places reliance upon a judgment of the Supreme Court in **'Brijendra Singh and ors. Vs. State of Rajasthan, 2017(3) RCR (Criminal) 374.'**

Learned State counsel submits that the petitioner was part of a crowd of persons, who had trespassed into the house of the complainant and assaulted her. Moreover, the trial is now complete and the case is fixed for

arguments. An application has been moved by co-accused for transfer of jail and thus, the matter is getting delayed.

A perusal of the FIR shows that the petitioner is also named as one of the persons, who forcibly entered the house of the complainant. Although, the specific role attributed to the petitioner was of snatching of two gold bangles and two gold rings, she was also named as a person who unlawfully trespassed into the house of the complainant. The complainant reiterated her statement made before the police on oath while appearing as PW3 and this statement on oath could have been taken into consideration by the trial Court, if it otherwise felt satisfied. The judgment in **Brijendra Singh's** case (supra) supports this view because it has been held therein that “no doubt, the trial Court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the Investigating Officer during investigation, which suggested otherwise, the trial Court was at least duty bound to look into the same while forming prima facie opinion.” In the case before the Supreme Court the statements of the prosecution witnesses examined under Section 161 Cr.P.C. as well as other evidence on record had established that the additional accused person was not present at the place of the incident and this evidence had been ignored by the trial Court while summoning the additional accused under Section 319 Cr.P.C. Thus, the order under Section 319 Cr.P.C. had been set aside by holding that the trial Court was duty bound to look into all the evidence on record.

The judgment aforementioned does not help the case of the petitioner. In any case, now, the trial is complete and it would be

appropriate to permit the trial Court to pass a judgment based on the evidence on record.

The petition is without merit and is accordingly dismissed. Any observations made hereinabove shall not be construed as opinion on the merits of the case and the trial Court shall decide the matter pending before it on the basis of evidence on record un-influenced by anything stated in this order.

(SUDHIR MITTAL)
JUDGE

24.09.2018

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No