

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

CRR No.538 of 2008 (O&M)
Date of decision: 15th December, 2018

Jyoti Sharma

... Petitioner

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. D.D. Bansal, Advocate for the petitioner.

Mr. Saurabh Khurana, Dy. Advocate General, Punjab
for the respondent/State.

FATEH DEEP SINGH, J.

This is a revision petition by petitioner Jyoti Sharma who has been arraigned as an additional accused as a consequence of impugned orders dated 18.10.2007 by the Court of learned Additional Sessions Judge, Bathinda whereby the Court below acting on an application under Section 319 Cr.P.C. of the prosecution, summoned the petitioner as an accused.

Heard Mr. D.D. Bansal, Advocate for the petitioner; Mr. Saurabh Khurana, Deputy Advocate General, Punjab on behalf of the respondent/State and perused the records of the case.

A case by way of FIR No.100 dated 21.07.2006 under Sections 312, 313, 120-B IPC and Section 12 of the Pre-Natal Diagnostic

Techniques (Regulation and Prevention of Misuse) Act, 1994 was registered at Police Station Nehianwala, District Ferozepur against Sukhdev Singh, Gurmit Kaur and Dr. Vinay Jindal. The allegations were levelled in the FIR (Annexure P2) by complainant Veerpal Kaur, a woman aged around 24 years. In her allegations, she claimed that she was married with Sukhdev Singh and out of the wedlock a child aged around 1½ years was born and during this period, she got pregnant from the loins of her husband and which pregnancy was assessed to be of 3½ months. It is alleged that on 01.07.2006 she was taken to Brar Hospital, Jaito by her husband, sister in law Paramjit Kaur and mid-wife of the village Gurmeet Kaur on the pretext of getting her medically examined. It is alleged that Dr. Amar Singh Brar of Brar Hospital after necessary medical examination gave a report to her husband that the child was weak and they should take the complainant to their hospital in Bajakhana. On the same day, family of the complainant took her to Patiala Nursing Home, Goniana. It is alleged that after check up at Patiala Nursing Home an injection was given in her right arm and another was given on the hip by Dr. Vinay Jindal and thereafter, she became unconscious. She alleged that when she woke up at 12:00 at night, she found herself at her residence at Bajakhana. She alleged that on inquiry she claimed that her husband told her that on check up it was revealed to be a girl child in her womb and

that his family never wanted a girl and therefore, abortion was undertaken. It is alleged that when she managed to get out of her matrimonial home on 18.07.2006 she was got admitted in Civil Hospital Bathinda by her father. It is alleged that her husband Sukhdev Singh, sister-in-law Paramjit Kaur and mid-wife Gurmit Kaur in connivance with each other undertook sex-determination test from Dr.Amar Singh Brar of Brar Hospital, Jaito and without her consent accused Dr.Vinay Jindal of Patiala Nursing Home along with two nurses, whose names she did not know and can recognize them, did this act. Upon completion of investigations, challan against Sukhdev Singh, Gurmit Kaur and Dr.Vinay Jindal was filed in Court. On recording of statement of the complainant at the trial as PW1 on 24.09.2007, she stated that the nurses who were present in the hospital, were later on found to be Beant Kaur and Jyoti Sharma, whose names she did not know earlier and came to know only when they visited her home to persuade her not to initiate any legal action.

The contentions of learned counsel for the petitioner Mr.D.D. Bansal, Advocate that at no point of time during the period from registration of the FIR on 21.07.2006 till her statement on 24.09.2007 there is any proof or evidence of the complainant having levelled any allegation against the present petitioner and has sought to impugn the

orders on the grounds that there has been a casual approach by the Court below and merely that Veerpal Kaur as PW1 has improved upon her version before the Court, the impugned orders have been passed.

The same is sought to be refuted and controverted with much force and vehemence by learned State counsel on the grounds that in the light of ratio laid down by Hon'ble the Supreme Court in '**Hardeep Singh vs. State of Punjab & others**' 2014(3) SCC 92, at any stage of the trial, the Court is vested with the power that where an evidence comes which was kept away from the Court during the investigations, the same can be considered by the Court.

Appreciating the submissions, it is the own admitted stand of the prosecution respondents that in the FIR, name of the petitioner Jyoti Sharma has never cropped up nor it is there that the complainant claims that she can identify them on seeing nor did she ever move the investigating agency for holding of test-identification-parade or moved any such application/representation to this effect at any point of time and even consequent upon completion of investigations and commitment of the case and framing of charge, she kept mum over the same and it is subsequent when her statement was being recorded as PW1 she has uttered the words which are reproduced as below to lay emphasis:-

“... .. The nurses who were present there in the hospital of Dr. Vinay Jindal, were later on found to be

Beant Kaur and Jyoti Sharma, whose name I did not know at that time. I came to know their names, when they visited my home to persuade me not to involve their names, in this case... ..”

A close look at this piece of evidence, which the only piece of evidence admittedly in this case against the petitioner, and a close examination of the same shows that besides the fact that it is based on mere hearsay, a belated attempt to rope in persons who were never there as a part of the allegations earlier, is sought to be made on such a weak and unacceptable inappropriate piece of allegations and she only claims that she came to know of it, are matters of much significance.

This Court, going through the law laid down in **Hardeep Singh’s case** (ibid) cited by learned counsel for the petitioner, further seeks support from ‘**Brijendra Singh & others vs. State of Rajasthan**’ **2017(3) RCR(Criminal) 374**, a subsequent view of Hon’ble the Supreme Court wherein their Lordships have also considered **Hardeep Singh’s judgment** (ibid) and have held that though powers under Section 319 Cr.P.C. are purely discretionary and extraordinary powers but need to be exercised sparingly and only in those cases where the circumstances of the case so warrant. As a mark of abundant caution, their Lordships have observed that such a power under Section 319 Cr.P.C. 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, and therefore, stressed that only where strong and cogent evidence occurs against the person from the evidence led before the Court, such powers can be exercised and not in a casual and cavalier manner and precisely, this is the situation in the present case. Scanning the impugned order and records of the Court below, the learned Additional Sessions Judge, merely because the complainant had stated it so, had summoned the petitioner as an additional accused and thus, by doing so has certainly caused immense prejudice to the case of the petitioner besides miscarriage of justice in allowing such an application under Section 319 Cr.P.C. The impugned order to the mind of this Court is certainly not only illegal in its findings but is even otherwise incorrect in its approach and therefore, needs to be set aside. The present revision petition stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

December 15, 2018

rps

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No