

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

CRR-2690-2015(O&M)

Date of decision:-11.7.2018

Shallu

...Petitioner

Versus

The State of Haryana and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.Gautam Kaile, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

Mr.Ajay Aggarwal, Advocate
for the respondent No.2.

H.S. MADAAN, J.

CRM-2044-2018

This is an application for placing on record the true translated relevant extract of inquiry report/challan along with its complete photocopy dated 24.1.2015.

Heard.

The application is allowed, as prayed for and the documents are taken on record, subject to all just exceptions.

CRR-2690-2015(O&M)

This revision petition has been filed by petitioner – Shallu feeling aggrieved by order dated 6.5.2015 passed by learned Additional Sessions Judge, Sonapat allowing application under Section 319 Cr.P.C.

summoning her as an additional accused.

Briefly stated, facts of the case are that the complainant had submitted a written complaint to the police that on 17.10.2014, Pawan made a telephonic call to Shalu, present petitioner, residing in neighbourhood of the complainant as two of them used to go to college together, asking Shalu to send the complainant to Railway Station, Sonapat; that she went there, boarded a train and reached at Chandigarh; that since Pawan did not meet her at Chandigarh, she came to Panipat where she met Neeraj, brother of Pawan, who took her to the house of his relative, then they went to Sonapat; that Neeraj had developed physical relations with her against her consent and had prepared her video film threatening that if she disclosed anything to any person, he would upload the video on internet, in that way, he started blackmailing her; that then Pawan and Gaurav also had sexual intercourse with her against her wishes; that Neeraj, Pawan and Gaurav did so repeatedly with her for several dates without her consent till 25.10.2014, when the police conducted a raid and recovered her. On the basis of written complaint submitted by the complainant, formal FIR was registered.

After completion of investigation, Neeraj, Pawan, Reena Malik and Gaurav were challaned. During the trial against them, an application under Section 319 Cr.P.C. was filed for summoning Shallu and Surender as additional accused. The trial Court disposed of that application vide the impugned order.

Feeling aggrieved Shallu has filed the present revision petition challenging that order, notice of which was given to respondents,

who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The operative part of the order containing reasoning for arriving at the conclusion in the form of paras No.7 and 8 is being reproduced for ready reference:

7. *“The powers which have been conferred upon the Court under Section 319 Cr.P.C. are discretionary in nature and the Court can proceed against any person if in the course of any inquiry into or trial of an offence it appears from the evidence that any person not being the accused has committed any offence for which he/she can be tried with the accused already arraigned. The provisions of this Section are, however, to be used sparingly and not in a routine manner. The Constitutional Bench of Hon'ble Apex Court in a recent judgment dated 10.1.2014 titled as **Hardeep Singh Versus State of Punjab, Criminal Appeal No.1750 of 2008** and some other connected appeals observed that the powers under this Section are 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 of that offence. It is an extra ordinary and discretionary power and is to be exercised where cogent and strong evidence occurs against a person from evidence led before the Court that such power should be exercised and not in a casual and cavalier manner.*

It was further observed 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. It had been further observed by the Hon'ble Apex Court that a person not named in the FIR or a person though named in the FIR, but not charge-sheeted or even a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried alongwith the accused already facing trial.

8. *Keeping in view the principle laid down in **Hardeep Singh Vs. State of Punjab's case (supra)**, now it is to be seen whether there is prima facie sufficient evidence on record to summon the proposed accused which can lead to the conviction, if goes unrebutted. Complainant Rachna when appeared as PW1 has specifically stated that Shalu had introduced her to accused Pawan and Shalu was also hand in glove with the accused. Complainant Rachna further stated in her examination in chief that accused Reena Malik was*

having live-in relationship with Surender and Reena Malik black-mailed and mounted pressure upon her to have sexual relation with Surender. Challan is totally silent on the point of finding proposed accused Shalu and Surender innocent and nothing has been mentioned i the challan how these persons were found innocent. This court finds that there is sufficient material on record to summon the proposed accused. So, keeping in view the facts and circumstances, the application under Section 319 Cr.P.C. is allowed.”

The law is settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse and not otherwise. The impugned order summoning the present petitioner as an additional accused is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law.

In the present case, I do not find any such illegality or infirmity with the impugned order much less apparent on the face of it. The order is certainly not in violation of settled principles of criminal jurisprudence. I do not see any reason to upset the impugned order.

Resultantly, the revision petition stands dismissed.

11.7.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No