

In the High Court of Punjab and Haryana at Chandigarh

**Crl. Revision No. 299 of 2016
Date of Decision: 06.2.2018**

Dalwinder Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Parmod Chaudhan, Advocate
for the petitioners.

Ms. Mahima Yashpal, AAG, Haryana

Ms. Ashna Gill, Advocate for
Mr. Aman Pal, Advocate
for respondent No. 2.

ANITA CHAUDHRY, J

This petition has been filed by the petitioner impugning the order dated 3.10.2015 passed by the Additional Sessions Judge, Kurukshetra vide which the application filed under Section 319 Cr.P.C. has been dismissed.

It would be necessary to give the brief background. The police had registered an FIR on the basis of a complaint made by the victim, a 14 years old girl relating to the incident which occurred on 20.2.2015. There was a marriage in the neighbourhood of the victim. The victim went out of the house at 7.00 P.M. to fetch water from the tap installed in the *gali*, in front of her house. She saw her aunt Jaswinder Kaur standing there. Jaswinder Kaur's brother Parveen and his two friends caught her and took

Jaswinder Kaur, her aunt. She resisted and tried to make noise but her mouth was closed and she was taken inside and raped.

The incident was reported to the police the next day and the child was sent for her medical examination. Her statement before the Magistrate was recorded on 24.2.2015 which figures in para 7 of the impugned order. She named Parveen and referred to two other persons but were not named. The police challaned Parveen and Mangat as a disclosure statement was made by Parveen revealing the name of his associate. The police also found his location there and challan was presented only against two. When the victim stepped into the witness box, she named Rajesh and Ram Kumar. She stated that she was taken in the house owned by Rajesh and she was raped by Ram Kumar and Rajesh was standing outside. She stated that she had also received injuries as she was beaten with a *danda*. She maintained that three people raped her. She named Rajesh as the person who was standing outside. She stated that on receipt of a phone call, the accused made her wear her clothes and left her and she came back to her house but there was no one at home and she lay on the bed. She gained consciousness the next day and narrated the occurrence. Her grandmother took her to the police station. She had also stated that the wedding was of the brother of Rajesh. She did not know whether Rajesh had gone in the *barat*. She admitted that she knew Rajesh who was her neighbour and Ram Kumar who was a Lawyer. She also stated that she was giving their names for the first time in the Court.

An application under Section 319 Cr.P.C. was moved. The Trial Court in its 15 page order exhaustively dealt with the evidence led before the Court and noted the contradictions and found the statement of the

victim to be not acceptable. It also noted that the victim thereafter died of burn injuries regarding which a separate FIR was registered on 24.7.2015 i.e. after the prosecutrix had made a statement in the Court. That incident occurred when the victim was in her own house. The trial Court summoned Ram Kumar and dismissed the application qua Rajesh.

I have heard the submissions of both the sides at great length.

Counsel for the petitioner has urged that the statement of the victim at the first instance was that they were three persons and she stood by her statement when her statement under Section 164 Cr.P.C. was recorded. It was urged that the child was in trauma therefore, could not name the other persons. It was urged that the girl was subsequently set on fire regarding which FIR has been registered under Section 302 IPC. It was urged that the trial Court had gone wrong in partly allowing the application and Rajesh should have been summoned to stand trial.

The submission on behalf of respondent No. 5 is that Rajesh lives in the neighbourhood and was known to the victim and the complainant had only given a statement that three persons had ravished her and the police had challaned two persons and the trial Court had summoned Ram Kumar. It was urged that the brother of Rajesh was to be married and the victim had stated that the *barat* had gone on that day and his name has been introduced subsequently and there were contradictions which the Court had noted and there is no explanation why his name was not given earlier as he was not a stranger. It was urged that the girl had committed suicide and it was not a case of murder and in the statement given to the police, the complainant had mentioned that the girl had sprinkled oil on herself. It was urged that there was no acceptable evidence and there was

no reason why he would stand outside and the victim had indulged in exaggerations.

The power to summon additional accused is found in Section 319 Cr.P.C. and the Court can proceed even against those persons who are not arraigned as accused and it cannot be disputed. A Constitution Bench in ***Hardeep Singh Vs. State of Punjab 2014(3) SCC 92*** explained the purpose behind the provisions and it also settled the controversy on the issue whether the word 'evidence' used in Section 319 Cr.P.C. indicates the evidence collected during investigation or it was limited to the evidence recorded during trial. It was held that it is that material, after cognizance is taken by the Court, that is available to it while making an inquiry into or trying an offence, which the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the Court. The word 'evidence' has to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. It means that the power to proceed against any person after summoning him can be exercised on the basis of any such material as brought forth before it. At the same time, the Court cautioned that the duty and obligation of the Court becomes more onerous to invoke such powers consciously on such material after evidence has been led during trial. The Court also clarified that 'evidence' under [Section 319](#) Cr.P.C. could even be examination-in-chief and the Court is not required to wait till such evidence is tested on cross-examination, as it is the satisfaction of the Court which can be gathered from the reasons recorded by the Court in respect of complicity of some other person(s) not facing trial in the offence.

The important question that would arise is what is the degree of

satisfaction that is required for invoking the powers under Section 319 Cr.P.C. and the related question would be under what situations the power should be exercised in respect of a person named in the FIR but not challaned. These two aspects were detailed by the Constitution Bench in **Hardeep Singh's** case (supra) and answered in the following manner:-

“95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under [Section 319 CrPC](#), though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in [Vikas v. State of Rajasthan \[\(2014\) 3 SCC 321\]](#) , held that on the objective satisfaction of the court a person may be “arrested” or “summoned”, as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

xx xx xx

105. Power under [Section 319 CrPC](#) is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It 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. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold 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 un rebutted, would lead to conviction. In the absence of such satisfaction, the court

should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if “it appears from the evidence that any person not being the accused has committed any offence” is clear from the words “for which such person could be tried together with the accused”. The words used are not “for which such person could be convicted”. There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused.”

The trial Court undoubtedly has the jurisdiction to add any person not being accused before it to face trial but only if the Court is satisfied that the persons who have not been arraigned as accused should face the trial. The trial Court can take a step to add such person as accused on the basis of evidence adduced before it. In so far as the material collected by the Investigating Officer at the stage of inquiry is concerned, it can be utilized for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. but the power under Section 319 Cr.P.C. is an extraordinary one and has to be exercised sparingly where the circumstances of the case so warrant.

The trial Court in its elaborate order has dealt with the contradictions. The complainant had not been able to justify as to why the victim did not name Rajesh in her earlier statement when he was known and a neighbourer. The only accusation against him was that he was standing outside. The victim had admitted that the marriage of the brother of Rajesh was fixed on that day therefore, his presence on the spot was doubted by the police and the Court had disbelieved the statement of the victim and rightly so and found her statement to be not acceptable and dismissed the prayer for summoning Rajesh as an additional accused. The trial Court had noted that a suggestion had been given to the victim that there was litigation going on

between the victim's grandfather and Rajesh and Ram Kumar was his counsel in the Nambardari dispute. The trial Court noted that the father of the victim had given three complaints and had accused Rajesh of gang-rape upon his daughter whereas the victim did not make allegations of rape against Rajesh. Considering the principles and applying the same to the present case, I am of the view that the trial Court was justified in dismissing the application so far as Rajesh is concerned. There is no evidence which hinted at even a mere possibility of the complicity of Rajesh.

I find no infirmity in the order. The order is well reasoned. The petition is dismissed.

(ANITA CHAUDHRY)
JUDGE

February 06, 2018
Gurpreet

Whether speaking/reasoned	:	Yes
Whether reportable	:	No