

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

CRR-2291-2017

Date of decision: 21.05.2018

Baljinder Kaur and others

...Petitioners

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. P.S. Ahluwalia, Advocate,
for the petitioners.

Mr. A.S. Sandhu, Addl. A.G., Punjab.

JAISHREE THAKUR, J.

1. The petitioners herein seek to challenge order dated 01.03.2017, whereby they have been summoned to face trial as additional accused on an application filed under section 319 Cr. P.C .

2. In brief, the facts are that FIR No. 182 dated 10.10.2015 came to be registered at Police Station Samana under Sections 363 & 366A IPC at the behest of Rani w/o of late Jagtar Singh. It was stated that she has four children out of which two were sons and two daughters and all were unmarried. Her husband had passed away about 8 years ago. Her stepbrother Pali Ram aged 19 years came to reside with her for constructing her house at her village and while residing with her made a physical relationship with her young daughter Pooja. Pali Ram induced her young daughter Pooja to

runaway, and with the help of relatives she was brought back. On the intervening night of 7th /8th of October 2015. Pali Ram again induced Pooja to leave by misleading her that he would marry her. It was stated in the FIR that efforts were made to trace both Pali Ram and Pooja but the complainant was unable to do so, which led to the registration of the FIR. After living in Amritsar for a short period, Pali Ram then took rented accommodation at Patiala where both of them resided. While at Patiala, she informed her neighbor Binder Kaur wife of Jagtar Singh about her situation, who then adopted her on 15.07.2016. It transpires that when her adoptive mother was not at home, on 17.07.2016 her uncle Gurpal Singh accompanied by three other persons forcibly put her in a white colour van and took her to a house in village Raipur Mandlan and kept there for 2- 3 hours and thereafter took her to Pacific Resort Factory Area, Patiala, where she was forcibly raped by Gurpal Singh and the three other known as Bachittar Singh, Ramji Dass and Jeet, threatened to kill her in case she disclosed the incident to anyone. She was taken to the Police Station by Binder Kaur and her statement was recorded on 20.07.2016. On the statement recorded, a case was registered against accused Gurpal Singh, Bachittar Singh, Ramji Dass and Jeet under Sections 363, 366, 376, 506, 120-B IPC. Thereafter, the prosecutrix was sent to Nari Niketan and Binder Kaur appeared in Court and stated that Rani Kaur (the biological mother of Pooja and the complainant in the FIR) had given her up by way of an adoption deed dated 15.07.2016. On the basis of the statement made and while relying upon statement of the prosecutrix recorded under section 164 Cr.P.C on 20.07.2016, that Binder Kaur was her

adoptive mother, custody was handed over to said Binder Kaur. Thereafter, another statement was recorded under section 164 Cr.P.C on 26.08.2016 in which an allegation was made that Binder Kaur is indulging in business of prostitution from her home. On 27.08.2016, another statement was recorded under section 161 Cr.P.C in which it was further elaborated that Binder Kaur used to get 'wrong thing' done and that she is in the business of flesh trade, while stating that she wanted to live with her mother, at village Asman Nagar @ Nijamni Wala. After she came to reside with her mother, another statement of the prosecutrix came to be recorded on 23.11.2016 under Section 161 Cr.P.C., wherein it was stated that she had filed two applications bearing No. 3404/OP dated 09.10.2016, 7288/PESHI dated 03.11.2016, 258/E dated 09.11.2016, to the Senior Superintendent of Police, Patiala on the asking of her mother and the applications were to be treated as a statement in which it was mentioned that Ex. Sarpanch son of Sandhu Singh, resident of Ranjit Nagar Seona, Balwinder Singh, Lakhwinder Singh sons of Labh Singh and Jassi committed rape upon her against her wishes at the house of Binder Kaur and Baljinder Kaur. It was stated that Binder Kaur and Baljinder Kaur made her do immoral activities and made her life hell. After framing of charges, statement of Pooja was recorded on 23.11.2016, wherein she reiterated the fact that Binder Kaur was indulging in immoral activities at her place and that she forced her to develop physical relations with other persons namely Ex. Sarpanch son of Sandhu Ram, resident of Ranjit Nagar Seona, Lakhwinder Singh and Balvinder Singh sons of Labh Singh and Jassi who was residing in the house of Baljinder Kaur. She also

identified her signatures on her statement while also identifying the applications moved by her before SSP, Patiala. At this stage, the prosecution sought an adjournment to move an application under Section 319 Cr.P.C for summoning additional accused, namely, the petitioners herein. The said application was allowed and aggrieved against the said order, the instant petition has been filed.

3. Mr P.S. Ahluwalia, learned counsel appearing on behalf of the petitioners herein, contends that the prosecutrix had not named the petitioners at the first instance nor were their names reflected in the FIR. It is only when a supplementary statement was recorded on 23.11.2016 that she introduced the names of the petitioners, with allegations of petitioner No.1 conniving with Binder Kaur in running a flesh trade and accusing petitioners No. 2, 3 and 4 of committing the offence of rape. It is argued that the prosecutrix had initially named only Gurpal Singh and Binder Kaur, while having her statement recorded under Sections 161 and 164 Cr.P.C. and thereafter there has been an improvement in her statement recorded and the petitioners have unnecessarily been roped in. Counsel for the petitioners also places reliance on the judgement cited as ***Hardeep Singh vs. State of Punjab and others, 2014(1) R.C.R. (Criminal) 623*** to argue that without any substantial evidence, summoning under Section 319 Cr.P.C. would be wholly unsustainable. It is submitted that the test as laid down in ***Hardeep Singh's*** case (supra) is that for the Courts to summon a person as an additional accused, there has to be strong evidence available other than mere probability.

4. Per contra Mr. A.S. Sandhu, learned counsel appearing on behalf of the Respondent State submits that in fact the prosecutrix had suffered a statement in Court and in the application submitted to the Superintendent of Police Patiala about the complicity of the petitioners in the commission of the offence of rape and they had rightly been summoned.

5. Section 319 of the Criminal Procedure Code states that when a trial is going on and the Court comes to know from the evidence which has been put forth before the Court that some other person who is not appearing before the Court as an accused person might have committed the offence, the Court can summon such person before itself. The purpose of Section 319 Cr.P.C. is to do complete justice between the parties and to ensure that persons, who ought to have been tried, do not escape. However, before summoning such a person, the material available should disclose the complicity of the person in commission of the offence which has to be the material that appears from evidence during the course of any inquiry. The Courts are required to apply the test as to whether evidence on record is such, which would reasonably lead to conviction of the person sought to be summoned.

6. The law is now well settled as regards summoning a person as an additional accused under Section 319 Cr.P.C., which power has to be exercised sparingly and with caution. ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92*** the Constitution Bench of the Supreme Court held:

“105. Power under Section 319 Cr.P.C 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 Cr.P.C. In Section 319 Cr.P.C 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 Cr.P.C. to form any opinion as to the guilt of the accused.”

(emphasis supplied).

7. In the present case, an FIR was registered at the behest of mother of the prosecutrix Pooja alleging that her minor daughter had been enticed away by her stepbrother Pali Ram and on the basis of the statement

offence under Sections 363 & 366-A IPC was made out against Gurpal @ Pali Ram. As it transpires, Pali Ram took rented accommodation at Patiala, where she came in contact with Binder Kaur and narrated her story to her. It appears that Binder Kaur thereafter adopted the prosecutrix. Thereafter, the prosecutrix went to the Police Station along with Binder Kaur and recorded her statement on 20.07.2016. The prosecutrix in her statement dated 20.7.2016 alleged that on 17.07.2016, when Binder Kaur was not at home, Gurpal Singh @ Pali forcibly took her in a white car and took her to Village Raipur Mandlan where they kept her for 2-3 hours and then they took her to Pacific Resort, Factory Area, Patiala where, Pali Ram forcibly raped her. Hence, the above mentioned FIR was registered. Statement of Pooja was recorded under Section 164 Cr.P.C, wherein it came to be mentioned that Binder Kaur is indulging in prostitution business from her home, and in a supplementary statement dated 27.8.2016 she further elaborated that Binder Kaur used to get 'wrong things' done from her. The prosecutrix also submitted that she wanted to reside with her mother at Village Asman Nagar @ Nijammi Wala. It is thereafter that she preferred applications bearing No. 3404/OP dated 09.10.2016, 7288/PESHI dated 3.11.2016, 258/E dated 09.11.2016, naming the petitioners herein as persons who committed rape upon her against her wishes at the house of Binder Kaur and Baljinder Kaur.

8. After the framing of charges, statement of PW1 Pooja was recorded on 09.02.2017, wherein she specifically named the petitioners herein, apart from the names of the other accused. The argument as raised by the counsel for the petitioners that their names were not reflected in the

FIR or that prosecutrix had not named them in the first instance, is not sustainable. The case in hand is not one that deals with provisions under Section 406/498A IPC where it has been noticed that there is a growing tendency to implicate all family members of the husband just to harass them. It is true that the petitioners had not been named in the FIR, but the fact cannot be lost sight of the fact that the mother who initially registered the FIR against Pali Ram would not be aware of the subsequent events.

9. As far as the contention raised that the prosecutrix had not named them in the two subsequent statements and had only named them at the behest of her mother, too cannot be sustained. From the very outset when the statement of the prosecutrix was recorded under Section 164 Cr.P.C on 26.08. 2016 at 9.39 p.m., she has maintained that Binder Kaur is indulging in prostitution business and thereafter again reiterated the same in her supplementary statement. After she left to reside with her mother, again submitted an application to the SSP naming the petitioners herein. The statement made on 27.08.2016, application filed before the Superintendent of Police and statement in Court after charges are framed, are consistent in naming the petitioners herein. The role of the petitioners could not have been investigated at the time of registration of the FIR since they were not named therein. It is only when the prosecutrix went back to reside with her mother that other names followed. The complainant could not be aware of any events that transpired subsequent to the prosecutrix being allured out of her home.

10. The argument as raised that there is a thirteen month delay,

which is a substantial delay in the statement forthcoming naming the petitioners, is without merit. The FIR was registered at the behest of Rani the mother of the prosecutrix in FIR No. 182 dated 10.10.2015. For the first time, a statement of the prosecutrix was recorded on 20.07.2016. Thereafter, she got recorded her supplementary statement on 26.08.2016 and asked to go back to reside with her mother. Once she went back to her maternal home, she submitted applications dated 09.10.2016, 03.11.2016 and 09.11.2016 to the Superintendent of Police and again suffered a statement naming the petitioners herein. Therefore, it cannot be said that there is undue delay.

11. The prosecutrix has been specific in her allegation and consistent therein about Binder Kaur running a prostitution ring. She has also been consistent in naming the petitioners which fact has been noticed by the Additional Session Judge while allowing the application under Section 319 Cr.P.C. Therefore, in the peculiar facts and circumstances of the present case when there are allegations of rape, immoral trafficking activities read with provisions of the POCSO Act, no ground is made out to set aside the impugned order.

12. Dismissed.

21.05.2018

Satyawan

**(JAISHREE THAKUR)
JUDGE**

Whether speaking/reasoned
Whether reportable

Yes.
No.