

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

CRR No.3764 of 2017

Date of decision: 1st November, 2018

Soni

... Petitioner

Versus

State of Haryana & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Vivek Khatri, Advocate for the petitioner.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for respondent No.1/State.

Mr. J.P. Jangu, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

This is a revision preferred by revisionist complainant wherein an application under Section 319 Cr.P.C. moved for summoning of the additional accused Manju respondent No.2 was dismissed by the Court of learned Additional Sessions Judge, Jhajjar vide impugned order dated 18.09.2017.

Heard Mr. Vivek Khatri, Advocate for the petitioner; Mr. Munish Sharma, Asstt. Advocate General, Haryana on behalf of respondent No.1/State; Mr. J.P. Jangu, Advocate representing respondent No.2 and perused the records.

It is well elicited from the records that in the very first information made to the police for registration of the FIR (Annexure P1), the prosecutrix has levelled allegations against Manju along with co-accused Baba Ranbir Dass, and even in her statement recorded under

Section 164 Cr.P.C. (Annexure P2) she has attributed definite role to this lady in the commission of crime and while testifying as PW2 had levelled clear categoric allegations against Manju and detailed the role attributed to her in commission of the offence. This submission of the learned counsel for the revisionist though has been sought to be refuted by learned counsel for the private respondent Mr. J.P. Jangu, Advocate by taking refuge to the statement under Section 161 of the Cr.P.C. of the husband of prosecutrix Ram Karan. However, the same does not come to the rescue of the respondent side. Firstly, it is the prosecutrix who is the victim and happens to have suffered at the hands of the accused and her account being the **first hand account**, certainly carries weight and is on a higher pedestal than that of her husband who has only heard through the mouth of the prosecutrix of what has happened in the Aashram on account of the acts of the accused.

The Court below has totally lost sight of the fact that statement under Section 161 Cr.P.C. cannot be considered as a piece of evidence and is for the purposes of confronting the witness. The Court below has given undue and immense weightage to the same which, as is evident from para No.5 of the impugned order, rather speaks of the very surreptitious intent of the order in bailing out the person that is sought to be summoned as additional accused in this case. The citation sought to be relied upon by the respondent in the case of **‘Brijendra Singh & others vs. State of Rajasthan’ 2017(3) RCR(Criminal) 374** is factually at much variance when the Hon’ble Supreme Court in **‘Hardeep Singh vs.**

State of Punjab & others’ 2014(1) RCR(Criminal) 623 relied upon by learned counsel for the petitioner has defined the ambit of Section 319 Cr.P.C. and given wide amplitude to the meaning of evidence in this provision of the Code of Criminal Procedure. It has been held that evidence as understood under Section 3 of the Evidence Act is the statement of witnesses that is recorded in the trial and documentary evidence in accordance with the Evidence Act which also includes documents and material evidence in the Evidence Act, and has further held that such evidence begins with the statement of the prosecution witnesses and includes the statement recorded during examination in chief and has drawn the conclusion that the word ‘evidence’ has been used in a comprehensive sense and includes evidence collected during the investigations or during the trial, and therefore, stresses that the same needs to be broadly understood.

In the light of what has been detailed and discussed above, the Court below has certainly run into an error resulting in miscarriage of justice and thus, the findings are not only illegal in approach but perverse in outlook, and are hereby set aside by way of acceptance of the revision.

The petition stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

November 1, 2018

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No