

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

**CRR No. 1128 of 2018(O&M)
Date of Decision: 21.05.2018**

Sukhwinder Kaur and another

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Ms. Gagandeep Grewal, Advocate
for the petitioners.

LISA GILL, J(Oral).

CRM-13377 of 2018

Annexures P-2 to P-5, are taken on record subject to just exceptions. Exemption in filing certified copies thereof, is granted.

Application is disposed of.

CRR No. 1128 of 2018

Petitioners are aggrieved of order dated 13.03.2018, passed by learned Sessions Judge, Sangrur, whereby application under Section 319 Cr.P.C., for summoning respondents no.2, 3 to face trial as additional accused in FIR No.126 dated 24.04.2017, under Sections 419, 420, 384, 376(2) (n), 506, 354-A, 354-D IPC and Sections 12 and 15 of Protection of Children from Sexual Offences Act, 2012, was dismissed.

Brief facts necessary for the adjudication of the case are that FIR (Annexure P-2) was registered on the statement of the petitioner to the effect that her husband retired from Army and was thereafter working as a security guard. Complainant had three children. It is stated that her elder daughter used to chat with her friends in connection with her studies with the help of internet. In the month of January 2017, a boy namely Maninder

Singh @ Sonu (the accused facing trial) started calling the complainant on her mobile phone while portraying himself to be a government employee. He told the complainant that her daughter used to send obscene videos to her friends, for which her daughter would be implicated. It is further alleged that on 14.01.2017, the complainant along with her daughter had come to attend a marriage function at Sangrur when accused Maninder Singh @ Sonu asked her to meet him along with her daughter. The complainant along with her daughter went to meet the said person after leaving from the marriage function. Allegation of extortion was made against accused-Maninder Singh @ Sonu whom they later came to know was actually Chamkaur Singh @ Sonu. It is further alleged that a sum of ₹1.5 lacs was given to Maninder Singh @ Sonu. Thereafter, on 24.01.2017, the said accused allegedly called her and pressurized the complainant to establish physical relations with him. It is stated that out of fear and on being administered some intoxicating material in juice, she was subjected to rape and obscene videos were made as well. The complainant was again called by Maninder Singh @ Sonu on 03.02.2017. He stated that he needed ₹10,000/-. When she expressed that she had no money, Maninder Singh @ Sonu asked her to sell her gold earrings. The complainant agreed under pressure to go to Muthoot Finance Company, Sangrur, where she mortgaged her earrings for a sum of ₹9000/- which was taken by Maninder Singh @ Sonu. Complainant disclosed this incident to her husband. Legal action was prayed for against the said accused.

It is to be noted that respondents no.2 and 3 were not named in the FIR neither any role attributed to them. Statement of the complainant under Section 164 Cr.P.C., was recorded on 06.05.2017, wherein respondents no.2 and 3 were again not named. Supplementary statement of

the complainant's daughter was recorded much later on 09.06.2017, wherein she stated that when her mother was taken towards the office of Muthoot Finance on 03.02.2017, respondent no.2 in his uniform was present alongwith him. The complainant's daughter in her statement recorded before the learned trial Court on 06.09.2017, mentioned the presence of respondent no.2, though it is stated that she could not see the face of police official standing there. The complainant, however, did not name the said person/persons at any stage. Thereafter, an application was filed under Section 319 Cr.P.C., for summoning respondents no.2 and 3 to face trial as additional accused. It was averred that respondent no.2 had joined hands with the main accused-Chamkaur Singh and facilitated commission of the offence. Moreover, respondent no.3, ASI Ajaib Singh, was mischievous towards the victim and he tried to help respondent no.2 in dodging the process of law. The matter was not properly investigated, therefore respondent no.3, it was prayed should be proceeded against for the offences punishable under Sections 201, 218 IPC.

Learned trial Court vide impugned order dated 13.03.2018, dismissed the application. Aggrieved therefrom, the present petition has been filed.

Learned counsel for the petitioner argues that even though the complainant has admittedly not named respondent no.2 in any of her statements, the complainant's daughter, who is clearly a victim in this case specifically named respondent no.2 in her supplementary statement on 09.06.2017. The Investigating Officer-respondent no.3, did not investigate the matter properly, therefore he should also be proceeded against. The said accused clearly facilitated in the commission of the offence as they helped the co-accused Chamkaur Singh @ Sonu in projecting himself to be a

police official. It is thus prayed that this petition be allowed.

I have heard learned counsel for the petitioner and have gone through the file.

It is not in dispute that the complainant has not named respondent no.2 at any stage either at the time of registration of FIR, her statement under Section 164 Cr.P.C., or even in her statement before the learned trial Court. Photocopy of the statement of the complainant (PW-1) furnished in Court today, is taken on record subject to just exceptions.

It is further not in dispute that the complainant's daughter in her statement recorded on 09.06.2017 i.e. after recording of statement of the complainant under Section 164 Cr.P.C., raised an allegation against respondent no.2 of accompanying the co-accused Chamkaur Singh when her mother was taken to Muthoot Finance. There is nothing on record except the said statement to indicate the complicity of respondent no.2, at this stage and neither is there anything on record to suggest that ASI Ajaib Singh, the Investigating Officer, did not conduct investigation in a proper manner as is alleged. It is further noted that statement of the prosecutrix was recorded by SI Gurmeet Kaur (PW-4). No allegations have been levelled against PW-4 that she was trying to aid or help any of the accused. It has been rightly held by the learned trial Court that in such a situation, it cannot be said that respondent no.3 tried to save anybody thereby rendering him liable to face criminal proceedings.

It has been held by the Hon'ble Supreme Court in **Hardeep Singh versus State of Punjab and others 2014 (3) SCC 92** and **Brijendra Singh versus State of Rajasthan 2017 SCC Online SC 491** that for summoning a person to face trial as an additional accused, there has to be something more than *prima facie* evidence though less than evidence to the

extent which if unrebutted, would lead to certain conviction of the said accused. In the factual matrix of the case, it cannot be said at this stage that there is evidence of this nature available on record which would justify the summoning of respondents No. 2 and 3.

Learned counsel for the petitioner is unable to point out any infirmity, illegality or perversity in the impugned order dated 13.03.2018, which calls for interference by this Court in exercise of its revisional jurisdiction.

Accordingly, this petition is dismissed.

It is clarified that none of the observations made hereinabove shall be construed to be a reflection on the merits of the case. The same are solely confined for the purpose of decision of the present petition.

21.05.2018
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No

Whether reportable: Yes/No