

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

CRR-2273-2018

Date of decision:-17.7.2018

Joginder Singh and another

...Petitioners

Versus

State of Haryana and another

...Respondents

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

Present: Mr.N.S. Shekhawat, Advocate
for the petitioners.

H.S. MADAAN, J.

This revision petition is directed against the order dated 31.5.2018 passed by learned Additional Sessions Judge, Gurugram summoning the petitioners as additional accused to face trial under Sections 328 IPC and Section 3(2)(v) of The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

The criminal machinery in this case set into motion by the complainant, who on 29.7.2016 went to Police Station Sector 40, Gurugram and submitted a written information to the effect that his eldest

daughter (victim) aged 19 years doing ANM course residing in the hostel had been missing from the hostel since 28.7.2016. As per his information, his said daughter had been enticed away by Krishan and in that act, Opin @ Satpal, Jaswant and Krishan Kuldeep were also involved.

After registration of the FIR, the matter was investigated. It came out that victim and Krishan had consumed some poisonous substance and were admitted in PGI MS, Rohtak. Then statement of victim was got recorded under Section 164 Cr.P.C. Offences under Sections 376(g) and 328 IPC were added. Accused Krishan was arrested in this case. Though the victim had taken names of Kuldeep, Satpal, Jaswant, Billu @ Sarabjeet and Jogender but they were found to be innocent and Sections 120-B, 376(g) and 328 IPC were deleted from the FIR and challan for the offence under Section 376 IPC only was filed in the Court against Krishan. After commitment of the case by the Illaqa Magistrate to the Court of Sessions, it was assigned to the Court of Additional Sessions Judge, Gurugram. The trial against accused Krishan started. Statement of victim was recorded as PW2. Then application under Section 319 Cr.P.C. for summoning Kuldeep, Opin @ Satpal, Jaswant, Billu @ Sarawjeet and Jogender as additional accused was filed. The trial Court allowed the application in light of the law on the subject and considering the evidence available on record besides the facts of the case. Paras No.16 and 17 of the order are very important and are being reproduced as under:

Closely appreciating the word to word evidence of victim(PW2), in all her statement recorded so far and the

statement of the complainant father, these are direct allegations raised by her against Kuldeep to have been part and parcel of the same. Sequence of incidents when Krishan had enticed her away for taking her to Haridwar on the date of 28.7.2016. She had made direct allegations on Kuldeep, Jaswant and Opin @ Satpal along with Krishan who have committed gang rape upon her in the Dharamshala room at Haridwar on 28.7.2016. In the further incident that had taken place on 29.7.2016, when Krishan and she were travelling in the bus near village Kulhana, Kuldeep, Billu @ Sarabjeet and Jogender to have forced her and Krishan to be now loaded in a vehicle and she forcibly made to drink phenol and case words used against her to insult her.

The statement of the witness for the time of recording her statement before learned Area Magistrate and now before the Court as PW2 is in the same consistency and sequence narrated and inspired the confidence as her version is also supported by father witness examined as PW1. Though there is an observation made by learned defence counsel that DNA report has been received in this case which is non incriminating but the same cannot be taken account today as time had lapsed from the time when the victim had alleged gang rape taking place with her and the time when her medical examination was done. Negating these observations and finding sufficient material on record

to invite the invocation of sections 363, 366, 376(2)(n), 328 IPC and Section 3(2)(v) of Schedule Caste and Scheduled Tribes Prevention of Atrocities Act, 1989 against accused Kuldeep, Section 376(2)(n) IPC against accused Jaswant, Section 376(2) (n) against accused Opin @ Satpal and Section 328 IPC and Section 3(2)(v) of Schedule Caste and Scheduled Tribes Prevention of Atrocities Act, 1989 against accused Billu @ Sarabjeet, Jogender and to face trial along with co-accused Krishan, I find convincing and clinching material on record file against the proposed accused to summon them under Section 319 Cr.P.C. Hence the application in hand is hereby allowed.

Feeling aggrieved, petitioners have approached this Court by way of filing the instant revision petition.

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

The law is well 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.

Even though the petitioners are not named in the FIR but it is to be noted that the simple purpose for registration of FIR is to set the criminal machinery into motion and it may not contain all the necessary details since most of times, it is lodged in hurry. It is only during the

investigation that one can come to know about the exact details of the incident, the persons who had participated therein and role played by each one of them. Furthermore, even if some persons whose names figured as culprits during the investigation are given clean chit by the police, then the Court during trial can certainly summon those, if their involvement is found to be there from the depositions available on the record. Here during the course of investigation when statement of victim was recorded under Section 164 Cr.P.C., she had specifically named both the petitioners and attributed criminal acts to them. Though the police did not challan them holding them to be innocent but again in her statement in the Court, the victim had reiterated that version on oath. The trial Court by giving proper reasoning and considering the law on the subject has summoned them as an additional accused.

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.

Finding no merit in the revision petition, the same stands dismissed.

17.7.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No