

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

CRR-2505-2018(O&M)
Date of decision:-6.8.2018

Tamanna

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present: Mr.Namit Sharma, Advocate
for the petitioner.

H.S. MADAAN, J.

CRM-M-26627-2018

This is an application under Section 5 of the Limitation Act read with Section 482 Cr.P.C. for condonation of 27 days delay in filing the revision petition.

Heard.

For the reasons mentioned, in the application, the same stands allowed and delay of 27 days in filing of the revision petition stands condoned.

CRR-2505-2018

This revision petition is directed against the order dated

5.4.2018 passed by learned Additional Sessions Judge, Panipat vide which an application under Section 319 Cr.P.C. moved by the prosecution for summoning of Sabila wife of Hasamudin and Naushad as additional accused to face trial with accused Mohsin, has been dismissed.

In nutshell, the facts of the case as per prosecution story are that complainant Salim son of Mobin, resident of Noorpur, District Bijnor (U.P.) then at Dhoop Singh Nagar, Panipat had reported the matter to the police on 11.12.2016 that his daughter Tamanna, aged about 18 years, a student of 9th class had left home on 29.11.2016 at about 4:00 p.m. without any intimation and despite best efforts, she could not be located and necessary action in the matter be taken.

On the basis of that information, formal FIR for the offence under Section 365 IPC was recorded. After the registration of the FIR, the matter was investigated. The girl in question was recovered. She got her statement recorded under Section 164 Cr.P.C., in which she stated that she has a friend namely Mumtaj, who was having relations with boys; that Mumtaj got her introduced with Mohsin; that one day Mumtaj said that she would celebrate her birthday in a hotel and asked the prosecutrix to join them. According to the prosecutrix, she agreed; that Mumtaj sent her to Pahwa Guest House, where Mohsin was called; that Mumtaj left stating that she would come with other friends, where Mohsin committed wrong act with her; that she became pregnant; that one day while she was weeping, her mother enquired about her health and then she narrated the entire story to her; that her mother did not disclose anything to the others; that one day she was going to school and Mohsin followed her; that he

asked her to sit on the bike but she refused, then a car came from opposite side and she was pushed inside the car, in which Naushad, maternal uncle of Mohsin was sitting and they took her to Khatik Basti for 2-3 days; that when her mother informed the police, then the police recovered her, however under pressure she did not get herself medically examined and rather opted to go with the boy stating that she had solemnized marriage with her consent and her age was 19 years; that she was accordingly sent to Orphan Home, Sondhapur; that her mother took her from there and admitted her in a school; that she had been going for examination then Naushad, Sabila and Mohsin again kidnapped her; that they sent her to U.P.; that she was recovered by the police.

When statement of the prosecutrix was recorded during the trial, she reiterated such contentions. Thereafter, an application under Section 319 Cr.P.C. was filed for summoning of Sabila wife of Hasamudin and Naushad as additional accused, which was dismissed by the trial Court.

Feeling aggrieved by the said order, the complainant has filed the present revision petition.

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

The impugned order is detailed one. Valid reasons for rejection of the application have been given. Latest law on the subject has been discussed. The law laid down by the Apex Court in respect of the satisfaction of the Court at the stage of summoning a person as additional accused under Section 319 Cr.P.C. that the test that has to be applied is

one which is more than a 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, has been taken into view. The relevant discussion is contained in paras No.7 and 8 of the order, which for ready reference are being reproduced as under:

7. Applying the principles laid down in the above stated report to the present case, it reveals that the case in question was registered on the basis of complaint of father of the prosecutrix "A" under Section 365 IPC. During investigation, the prosecutrix was recovered on 12.12.2016 and her statement was recorded under Section 164 Cr.P.C. After completion of investigation on the complaint, the case was registered against the accused Mohsin under Section 6 of the POCSO Act, 2012. The name of the proposed accused Naushad and Sabila was not stated by the prosecutrix in her statement dated 16.03.2017 recorded by Ms. Sudesh Malik, Advocate and in her statement under Section 164 Cr.P.C. recorded on 12.12.2016 recorded by the learned JMJC, Panipat. Thereafter, her statement was recorded on 16.03.2017, in which the name of Naushad, Sabila and Mohsin has been mentioned. The name of Naushad and Sabila stated after thought. Further, there is no evidence on the file against the proposed accused except the statement of prosecutrix. She levelled the allegations against Mohsin only. The essential ingredients of Section 319 Cr.P.C. are not

attracted to the averments made in the application.

8. In view thereof, I am of the firm opinion that a prima facie case is not made out against Naushad and Sabila for being summoned in the present case under Section 319 Cr.P.C for facing trial with the co-accused, who is already facing trial in it.

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.

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.

Thus the revision petition stands dismissed.

6.8.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No