

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

CRR-789-2018 (O&M)

Date of Decision: 02.08.2018

Swati Kataria

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Petitioner in person.

ANITA CHAUDHRY, J

This is a revision assailing the order dated 06.02.2018 passed by the Additional Sessions Judge, Panchkula dismissing the application filed by the petitioner seeking to summon of mother of the main accused.

I have heard the petitioner in person at great length. The petitioner was asked to place some documents which have been placed on record.

On a complaint made by the victim the case was registered against respondent No.2. The allegations made were that the victim became friendly with Gurpreet Singh which later culminated into an affair and a promise from Gurpreet Singh that he would marry her. The two of them started meeting more often. The allegations were that the accused had sexual relations with her on two occasions. The victim later on alleges that she came to know that she had been cheated and the accused had no intention to marry.

The police investigated the case and filed challan against

Gurpreet Singh under Section 376 IPC. The complainant, after her statement was recorded, moved an application under Section 319 Cr.P.C. naming Manjeet Kaur and wanted her summoning. The trial Court noted that the complainant came forward to make her statement after great reluctance and number of adjournments and the evidence of the prosecution was closed in April, 2017. Subsequently, an application under Section 311 Cr.P.C. was filed and the complainant was recalled to complete her statements as earlier she had failed to appear and her statement could not be completed despite issuance of warrants. The trial Court dismissed the application and gave its reasons in Para-7 which are as follows:-

“In the complaint Ex.PY, which is the genesis of the present case FIR, it is nowhere mentioned that aforesaid Manjeet Kaur had been instrumental in the crime against the complainant, if any. What had prevented her from such allegations in the aforesaid complaint, has not been explained by the complainant at all. Further, already observed, the allegations of the complainant in nutshell are that the present accused-Gurpreet had developed physical relations with her on the pretext of solemnizing marriage with her. The complainant being a law graduate is supposed to be well conversant with the relevant provisions of law. Her stand cannot be stated to be consistent throughout and as such, the law relied on her behalf in case of “Arshida Vs. State of Haryana and others” 2014(1) RCR (Criminal) 946 (P&H)” is not applicable to the facts and circumstances of this case. Had she any honest intention, she would have appeared in the court at the first instance and not kept on playing hide and seek. Mere making of allegations against the accused does not fulfill the requirement of higher standard set-up for the purpose of invoking the jurisdiction under Section 319 of the Code of Criminal Procedure by the trial Court. What is

further required is that the material, which is brought before the Court must be of such a nature as would satisfy the Court that during the trial it has appeared from the evidence that a person not being an accused has committed any offence for which such person could be tried together with the accused, who are also being tried.”

The trial Court noted that the complainant had not made any allegations against Manjeet Kaur in the FIR. It would be useful to give the details of the FIR and it reads as under:-

“1. That complainant is permanent resident of House No.1110, Sector-9, Urban Estate, Karnal (HR). 2. That complainant took admission at Panjab University, Patiala for LLB 3 year course in 2011. 3. That complainant use to reside at Panchkula from where she use to travel to her University and in the year 2012 complainant met accuse and subsequently they became good friend and lateron, friendship culminated into an affair, on a understanding that accused marry the complainant and both started seeing each other. That thereafter accused made advance towards the complainant and compelled her to make physical relations with him but when she tried to reason out, accused use to say that it is only a matter of few months and after some time they will be marrying each other, sot complainant should not resist him and to avoid any unpleasantness in the relationship complaint used to succumb to his pressure and made sexual relationship with him on two occasions. That the last sexual act was made by the accused at his residence in the month of May 2014 when the complainant had gone to take her examination for contract act. That the accused had even introduce his family to the family of me complainant and as such family of complaint was very much ready to get both of them married and even of roka ceremony was fixed for 7/11/2014 but same was repeatedly along with her mother had gone to pay a visit

to the family of accused and complaint was shocked to know that accused had been cheating the complainant and he never intended to marry her as he was simultaneously having affairs with other girls also. 8. That when complainant came to know about the real intentions of the accused she shocked him to tell his side of the story but accused refused to give any explanation rather a false complaint was moved by the mother of the complainant in order to settle the matter with the complainant however it were mentioned here that accused malafidely induced the complainant to believe that he will marry her and under misrepresentation accused raped the complainant and developed physical relations with her whereas accused from the very beginning had no intentions to marry her rather he simply wanted to make physical relations with her on the pretext marriage. 9. That now when complainant has come to know about his act and conduct she wants him to be punished so that he does not ruin life of the other innocent girls. 10. Out first sexual relation was made in Panchkula Sector-25, House No.76 on 4th March 2014.”

I have perused the statement given by the petitioner to the police and also the statement given by the prosecutrix in the Court. The police had filed the challan only against Gurpreet Singh. During the examination-in-chief, the complainant reiterated her statement with respect to Gurpreet Singh but levelled allegations against the mother which did not find place in the original complaint. The principles for summoning, the additional accused have been dealt in '**Hardeep Singh Vs. State of Punjab, 2014(3) SCC 92**' and the relevant paragraph reads as under:-

“95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in Vikas v. State of Rajasthan [(2014) 3 SCC 321] , held that on the objective satisfaction of the court a person may be “arrested” or “summoned”, as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

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105. Power under Section 319 CrPC 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 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused.”

The power to summon additional accused is found in Section 319 Cr.P.C. and the Court can proceed even against those persons who are not arraigned as accused and it cannot be disputed. The Constitution Bench explained the purpose behind the provisions and it also settled the controversy on the issue whether the word 'evidence' used in Section 319 Cr.P.C. indicates the evidence collected during investigation or it was limited to the evidence recorded during trial. It was held that it is that material, after cognizance is taken by the Court, that is available to it while making an inquiry into or trying an offence, which the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the Court. The word 'evidence' has to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. It means that the power to proceed against any person after summoning him can be exercised on the basis of any such material as brought forth before it. At the same time, the Court cautioned that the duty and obligation of the Court becomes more onerous to invoke such powers consciously on such material after evidence has been led during trial. The Court also clarified that 'evidence' under Section 319 Cr.P.C. could even be examination-in-chief and the Court is not required to wait till such evidence is tested on cross-examination, as it is the satisfaction of the Court which can be gathered from the reasons recorded by the Court in respect of complicity of some other person(s) not facing trial in the offence.

Considering the principles laid down by the Apex Court above, I find no infirmity in the order passed by the Court below. The trial Court had examined the evidence collected by the police and the statement made by the prosecutrix in the Court and found it to be at variance. There is no

infirmity in the findings. The Power under Section 319 Cr.P.C. is an extraordinary power and is not to be easily resorted to. Mere making of allegations does not fulfill the requirement of the standard set down in *Hardeep Singh's* case (supra).

The petition is dismissed.

August 02, 2018

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**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No