

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

**Criminal Revision No.857 of 2018
Date of decision: 27.09.2018**

Raj Kumar and others

..Petitioners

Versus

State of Haryana and another

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Namit Khurana, Advocate
for the petitioners.

Mr. Chetan Sharma, AAG, Haryana
for respondent No.1-State.

Mr. Vipin Kumar, Advocate
for respondent No.2.

Daya Chaudhary, J.

Petitioners, namely, Raj Kumar, Mukesh alias Paali and Aman Kumar, have approached this Court by way of filing the present revision petition to challenge impugned order dated 05.12.2017 passed by the Additional Sessions Judge, Yamuna Nagar at Jagadhri, whereby, the petitioners have been ordered to be summoned under Section 319 Cr.P.C. as additional accused to face trial in case FIR No.17 dated 03.03.2017 registered under Sections 323, 506 IPC and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act (hereinafter referred as 'the SC/ST Act') at Police Station Women, District Yamuna Nagar.

Briefly, the facts of the case as made out in the present revision

petition are that complainant-respondent No.2 made a complaint to the Police against the petitioners and other co-accused with the allegations that on 16.01.2017 at about 5.00 pm, she had gone to her Bara for making cow dung cakes and the petitioners were also having a Bara nearby her Bara. Accused-Rinku started doing obscene act with the complainant and caught her from the back with bad intention by putting his hand on her breast. On raising alarm, mother, brother of the complainant and some other persons of the village came at the spot. The accused persons gave beatings to the complainant and also used abusive words regarding their caste. The accused persons insulted the complainant's party socially and threatened that they would not be allowed to reside in the same village. It is also alleged in the complaint that accused persons torn the clothes of the complainant. On the basis of said complaint, aforesaid FIR was registered and thereafter, challan was also presented against Ram Kumar only on 28.07.2017 as the present petitioners were found innocent during investigation and were kept in Column No.2 of the challan. After presentation of challan, the charges were framed under Section 323, 506 IPC and Section 3 of the SC/ST Act. During pendency of the trial, statement of complainant-respondent No.2 was recorded as PW4 on 27.11.2017. After recording her examination in chief partly, the complainant moved an application under Section 319 Cr.P.C. for addition of five persons including the present petitioners as accused persons. The trial Court summoned the petitioners to face trial vide order dated 05.12.2017, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioners submits that the impugned

order has been passed in a casual manner without recording any satisfaction whereas the petitioners were found innocent during detailed investigation. Nothing has come on record to show as to what evidence has come in the statement of complainant-respondent No.2 subsequently, which shows the involvement of the petitioners in commission of offence. Learned counsel also submits that the incident occurred on 16.01.2017 at about 5.30 pm and the complaint was made on 17.01.2017, which appears to be an after thought. Learned counsel also submits that otherwise also, no offence is made out against the petitioners as there was no evidence to prove that said words used against caste were to humiliate or insult the complainant. Such words were not stated in presence of any person and it cannot be said that the incident occurred was within the public view. Learned counsel also submits that the present FIR is a counter-blast of the earlier litigation wherein complainant-respondent No.2 along with other family members caused injuries to co-accused-Ram Kumar and a complaint was also made in this regard but no action was taken by the Police. Said Ram Kumar was medically examined received seven injuries, which were caused by complainant-respondent No.2 party. The MLR of Ram Kumar is prior to the MLR of complainant-respondent No.2. As per allegations levelled by respondent No.2, the injuries were given to her but there was no external injury mark on her person, which makes the complainant's story false. Learned counsel for the petitioner has also relied upon judgment rendered by Hon'ble the Apex Court in ***Hardeep Singh vs. State of Punjab and others, 2014(1) RCR (Criminal) 623*** in support of his arguments.

Learned State counsel has not disputed the submissions made

by learned counsel for the petitioners as during investigation, the petitioners were not found to be involved in commission of offence.

However, learned counsel for respondent No.2 has opposed the submissions made by learned counsel for the petitioners on the ground that a very well reasoned and detailed order has been passed after recording statement of complainant-respondent No.2. The petitioners were found to be involved in commission of offence. It cannot be said at this stage that the petitioners were not involved in commission of offence as specific allegations were levelled against them and they were present at the place of occurrence. Learned counsel also submits that the plea of alibi cannot be considered at the stage of summoning as it is a matter of evidence. Learned counsel for respondent No.2 has also relied upon judgment rendered by Hon'ble the Apex Court in *Brijendra Singh and others vs. State of Rajasthan, 2017(3) RCR (Criminal) 374* in support of his arguments.

Heard arguments of learned counsel for the parties and have also perused the impugned order as well as other documents available on the file.

On perusal of impugned order dated 05.12.2017, it is apparent that only the allegations, which were part of complaint, have been mentioned and thereafter, it has been held that in case, the accused were found innocent during investigation, this ground cannot be a basis for not summoning them as accused. The relevant part of impugned order dated 05.12.2017 is reproduced as under: -

“xxx

xxx

xxx

7. While appearing in the witness box as PW4, she

*had testified against Rinku, who had pressed her breast from back and touched her private parts by throwing her on ground. She also levelled allegations against Raj Kumar, Ram Kumar, Aman Kumar, Pilla, Nanha and Jagdish, who came at the spot, laced with kassis, bindas, jaili and lathis. She also testified that they gave abuses on her caste; thrown her on the ground and put their hands on her private parts. On glancing all these facts and other attending circumstances already discussed above, so apparent on record, the court is of the opinion that participation of Rinku, Raj Kumar sons of Ram Kumar, Mukesh @ Paali son of Aman Kumar, Raj Kumar @ Nanha son of Jagdish and Aman Kumar son of Jagdish is explicit in the commission of offence. Merely because, these accused have been found innocent as per police report under Section 173 Cr.P.C. is not a ground that they cannot be summoned as additional accused to face trial alongwith accused already arraigned. This being so, the ratio of law laid down by Hon'ble Apex Court in cases of **Hardeep Singh, Suman and Michael Machado and another's (Supra)** is attracted with full force. Accordingly, the application of prosecution/ complainant has substance and the same is allowed. Consequently, Rinku, Raj Kumar sons of Ram Kumar, Mukesh @ Paali son of Amar Kumar, Raj Kumar @ Nanha son of Jagdish and Aman Kumar son of Jagdish are ordered to be summoned as additional accused to face trial. Put up on 8.1.2018 for securing the presence of above mentioned accused, as additional accused and for consideration on application for alteration of*

charge.”

In the impugned order of summoning passed by the trial Court, nowhere it has been discussed as to what was the evidence collected by the Investigating Agency to show that the petitioners were found innocent and what has come in the statement of complainant while appearing in the Court to summon the petitioners. For summoning an accused, the reasons are required to be mentioned.

Section 319 Cr.P.C is reproduced as under for resolving the present controversy, :-

“319. Power to proceed against other persons appearing to be guilty of offence.---(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then --

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard.

(b) subject to the provisions of clause (a), the

case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

As per provisions of Section 319 Cr.P.C., in case, it appears to the Summoning Court that any other person, who has not been challaned, is also involved in the commission of offence, can be summoned and tried together with the accused, who are facing trial. This remedy can be availed when the Court comes to the conclusion that during an inquiry or trial, it appears to the Court that the persons sought to be summoned are also involved in the commission of offence.

While exercising powers under Section 319 Cr.P.C., it is to be seen by the Summoning Court as to what role has been played by the person, who is sought to be summoned, whether said person is also involved but has not been challaned. Power under Section 319 Cr.P.C is an extraordinary power, which is to be exercised if, compelling reasons are there or more than *prima facie* case is made out. Only on the basis of vague and general allegations or on recording casual statement of the witnesses, such person can't be summoned. The Court is to arrive at a conclusion/satisfaction that the evidence adduced on behalf of the prosecution, if goes un-rebutted, would lead to conviction of persons sought to be summoned. This extraordinary power can be exercised by the Court *suo-moto* or on an application moved by the complainant/prosecution. In case, it appears to the Court that there is an evidence, which shows the involvement of such person in commission of offence. The Summoning Court must be satisfied that there exists a possibility that the person sought

to be summoned can be convicted.

The controversy, in hand, is squarely covered by the decision rendered in ***Sarojben Ashwinkumar Shah etc. vs. State of Gujarat and others 2011(3) RCR (Criminal) 852***, wherein, it was held that the Court while exercising the powers under Section 319 of the Code, must keep in view full conspectus of the case including the stage at which the trial has proceeded already and the quantum of evidence collected till then. It was further held that power to summon accused under Section 319 of the Code is an extraordinary power and should be used very sparingly and only if compelling reasons exist. This power cannot be exercised only on the basis of conducting a fishing inquiry.

This Court in case ***Hasin and another vs. State of Haryana 2011(2) RCR (Criminal) 429***, has held that vague and ambiguous or casual statement made by witnesses cannot be made the basis to summon the person to face trial under Section 319 of Code of Criminal Procedure.

Hon'ble the Apex Court in case ***Ram Singh and others vs. Ram Niwas and another 2009(3) RCR (Criminal) 501*** has held that power under Section 319 Cr.P.C must be exercised very sparingly and not as a matter of course. It is further held that it is error to summon a person as additional accused on the ground that a prima-facie case was made out. The court is to arrive at a satisfaction that evidence adduced on behalf of the prosecution, if un-rebutted, would lead to conviction of the persons sought to be added as accused in this case.

Hon'ble the Apex Court in case ***Mohd. Shafi vs. Mohd. Rafiq and another 2007(2) RCR (Criminal) 762*** has held that before the court

exercises its discretionary jurisdiction in terms of Section 319 of the Code of Criminal Procedure, it must arrive at the satisfaction that there exists a possibility that the accused so summoned in all likelihood would be convicted.

Hon'ble the Apex Court in *Hardeep Singh's case (supra)* has held that the degree of satisfaction for summoning a person under Section 319 Cr.P.C would be the same as for framing of charge but satisfaction of the Court is to be relevant in case and only when, the Summoning Court is of the opinion that some other persons are also involved in the commission of the offence. Not only *prima facie* case is to be established from the evidence led before the Court but that material, which has come in the form of statement, is sufficient for framing of charge.

No doubt, the Court has power under Section 319 Cr.P.C. to summon those witnesses, which have not been challaned or were kept in column No.2 of the charge-sheet filed under Section 173 Cr.P.C but while passing order of summoning, it is to be seen by the trial Court that the allegations levelled against the persons sought to be summoned were found false and challan was not presented against them. It is to be recorded as to how the trial Court has reached to the conclusion that the petitioners were also found to be involved in commission of offence. This power can be exercised only if it appears to the trial Court from the evidence recorded at the time of trial and not otherwise that some evidence is there against the persons sought to be summoned. Even a *prima facie* opinion is to be given to show the involvement of those persons in commission of offence but in the present case, neither any finding has been recorded nor it has been

mentioned as to how it has been inferred from the statement of complainant-responder No.2 that the present petitioners were involved in commission of offence.

The basic requirement for invoking the provisions of Section 319 Cr.P.C. is that it should appear to the Court from the evidence collected during trial or in the inquiry or in the statement of complainant that the accused sought to be summoned have committed an offence for which, they should also be tried along with accused party already facing trial. It is not enough that the Court has any doubt from the evidence about the involvement of any other person in commission of offence but there should be a reasonable satisfaction from the evidence already collected regarding their involvement. The first is that the other persons have committed an offence and secondly, said offence has also been committed by other persons, who have been left out by the Investigating Agency. Simply by mentioning that the Court has made the opinion that participation of the petitioners is also there in commission of offence and the petitioners have been summoned. The summoning of an accused is a serious matter and it should not be taken lightly.

In view of the facts and law position as discussed above, I am of the considered opinion that the impugned order passed by the trial Court is not only non-speaking but the same has been passed without any application of mind as neither any satisfaction has been recorded nor any finding has been given to show as to what evidence has come in the statement of the complainant due to which, the petitioners have been summoned.

Accordingly, the present revision petition is allowed and impugned order dated 05.12.2017 is set-aside. However, the trial Court is directed to reconsider the matter afresh and pass orders keeping in view the observations made above and in accordance with the provisions of Section 319 Cr.P.C.

27.09.2018
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes