

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

CRR-906-2018(O&M)

Date of decision:-19.9.2018

Sunita Verma

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present: Mr.A.P.S. Mann, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana.

Mr.Baljeet Beniwal, Advocate
for respondents No.2 to 4.

H.S. MADAAN, J.

This revision petition is directed against the order dated 9.2.2018 passed by learned Additional Sessions Judge, Faridabad vide which second application under Section 319 Cr.P.C. filed by the prosecution for summoning respondents Tannu @ Yogesh, Ritu and Avdesh as additional accused to face trial with charge-sheeted accused Rampal and Parveen had been dismissed.

Briefly stated, the facts of the case, are that the complainant (name not being mentioned to conceal her identity and referred to as '*the prosecutrix*') had submitted a complaint to the Police Commissioner, Faridabad seeking lodging of FIR against Rampal and Parveen for committing rape upon her, blackmailing her through obscene video and

extending threats to her life. *Inter alia* the complainant submitted that she is married having four children; that she had purchased a plot at Faridabad through Rampal, as a result of which, Rampal got acquainted with her and started visiting her house frequently; that about four months earlier Rampal along with his associates Parveen, Tannu @ Yogesh and Ritu came to house of complainant in an Alto car and asked her to accompany them to the site of the plot; the complainant refused to do so since her husband was not at home, however, on insistence of Rampal, the complainant accompanied them in Alto car for going to site of the plot, however, en-route she was intoxicated and was carried towards Mathura side; that when the complainant regained consciousness, she found herself in a hotel room where Rampal and Parveen had forcible sexual intercourse with her; that in the morning hours both of them threatened the complainant that in case she disclosed the incident to any other person then they would kill her family members, therefore, the complainant kept quiet. According to the complainant, after this incident both the culprits i.e. Rampal and Parveen became got emboldened and started visiting her house quite frequently asking her to become their keep and when the complainant refused to do so, they started misbehaving with her daughters; that on 8.5.2016 while the complainant was going towards her residence from the market, she came across Rampal, who asked the complainant to live as his keep pressurising her to accompany him but the complainant refused and threatened to report the matter to the police; that Rampal started abusing the complainant claiming that the police department was in his pocket; he threatened to kill the complainant and

her children if she reported the matter to the police; that on 9.5.2016, the complainant submitted a complaint to higher police authorities; that on coming to know about the same, Rampal and his associates threatened the complainant; that accused asked Renu to call the complainant on her mobile phone, who did so and threatened the complainant; that under influence created by Rampal and his associates, one ASI namely Maya Rani posted at Police Station Women Cell, Faridabad also made a call to the complainant from her mobile asking her to come to police station on 3/4.6.2016 and when the complainant reached there, she found that Rampal and Avdesh accused were already there, then all the accused as well as Maya Rani ASI pressurised the complainant to withdraw her complaint, failing which, the complainant and her associates would be implicated in false and fabricated cases, therefore, the complainant was left with no other option but to sign on blank papers; that on 4.6.2016, accused Rampal and others took the complainant to Women Police Station at gun point and made her to sign blank papers; that on that very day when the complainant went to her sister's house at village Chibila, District Partapgarh (U.P.) to look after her ailing sister, the police party raided residence of the complainant at about 11:30 p.m. and started beating up children of the complainant threatening that since a case was pending against the complainant, she be sent to police station at the earliest; that the children of the complainant had noticed Rampal and Avdesh accused standing outside their house as they were accompanying the police officials; the children of the complainant informed the complainant accordingly; that on 5.6.2006 at about 10:30 p.m., accused

Rampal and Avdesh reached the residence of complainant and at that time, they were under influence of liquor and they started misbehaving with daughters of the complainant asking them to entertain them till their mother - the complainant returned. In the written complaint, the complainant sought taking of action against the culprits.

Formal FIR in the matter was registered. The investigation in the case started. After completion of investigation and other formalities, challan against Rampal and Parveen only was filed in the Court. The trial against Rampal and Parveen proceeded, during the course of which, the prosecution moved an application under Section 319 Cr.P.C. for summoning of the additional accused, which was dismissed by the trial Court vide order dated 17.4.2017. The trial Court vide a detailed well reasoned order in light of the settled law on the subject came to the conclusion that the application deserved to be dismissed. The reasons for the same have been given as under:

- (i) The complainant/prosecutrix in her statement under Section 161 Cr.P.C. had stated that she was taken by Tannu @ Yogesh, Rampal and Parveen to Palwal and then to Mathura on 31.10.2015 and she was given some intoxicant substance in Palwal, resultantly, she became unconscious and she had stated so during the trial while appearing as PW2 but Jai Singh, Assistant Manager of Bal Gopal Bhawan, Dharamshala, Vrindavan in his statement recorded on 20.8.2016 did not show any record of prosecutrix along with accused

going to Bal Gopal Bhawan Dharamshala, Vrindavan on 31.10.2015, rather his statement showed that on 16.11.2015, two ladies remained with three man and one child had come and none of them was under influence of intoxicant substance and they had left Dharamshala on 17.11.2016. The entry in the record showing name of Rampal with there being nothing to point out that the complainant had gone to Vrindavan on 16.11.2016.

(ii) In her statement under Section 161 Cr.P.C., the prosecutrix had named Rampal, Parveen and Avdesh stating that they had come to her house on 9.8.2016 at night but in her statement under Section 164 Cr.P.C. she added name of Ritu and Tannu @ Yogesh also whereas their names were not found to be there in statement of Meenu daughter of complainant got recorded under Section 164 Cr.P.C. and also when she got her statement recorded in the trial.

(iii) The prosecutrix did not state anything as regards the date 2.8.2016 in her statement under Section 161 Cr.P.C., however, in her statement under Section 164 Cr.P.C., she stated that on 2.8.2016, Parveen, Rampal and Avdesh intercepted her in the market and asked her to withdraw the case by giving threats. When the statement of complainant was recorded in the Court as

PW2, she improved more by stating that only Rampal and Avdesh met her and held out the threat, in addition to showing obscene video to her. In her improved version, she had not named Parveen.

The remaining reasoning has been given in paras No.13 to 16 of the order, which for ready reference reads as under:

13. The daughter of prosecutrix released her statement under Section 164 Cr.P.C. and deposed that Ram Pal, Parveen and Avdesh entered in the night of 9.8.2016 and started abusing them. They showed video to them and asked them to say to their mother to withdraw the complaint. When this Menu appeared as PW1 she has supported but here she also improved by stating that after hearing noise mother came and she narrated the incident to her. Mother when appeared as PW2 deposed that Ram Pal and Avdesh used filthy language to her daughter and caught her hand and pulled her towards themselves and tendered threats but all these facts regarding using filthy language by Avdesh and catching her daughter towards him is not part of her statement under Section 164 Cr.P.C. or in the statement of PW1 before the court and when she released her statement Ex.PA before Magistrate. Again this is an improved version for Avdesh only.

14. Only the examination of these two witnesses have been conducted. The ACP conducted investigation but he did not

find any role of Avdesh, Neetu and Tanu and this fact is mentioned in the end of challan. However, this ACP has not been examined so far.

15. The counsel for the accused has attracted my attention towards railway tickets available on the case file showing the presence of Avdesh in Bihar during that period and he came back only on 14.8.2016 and on the day of incident he was not here.

16. The test has to be applied is one which is more than prima facie case as exercised at the time of framing the charge but short of satisfaction to an extent that if evidence goes un rebutted would lead to conviction as per law laid down in Hardeep Singh Versus State of Punjab and others 2014(1) RCR 623. So the material on the record as discussed above does not satisfy requirement of law laid down in the aforesaid authority rather the witnesses have improved themselves in their statements so as to implicate these three proposed accused. So, I do not see any ground in the application and same stands dismissed.

Feeling aggrieved by that order, the complainant had filed a revision petition bearing No.CRR-1763 of 2017 in this Court but on 18.5.2017 after arguing for some time, counsel for the complainant/petitioner stated that he wanted to withdraw the petition and sought liberty to take all the pleas at an appropriate stage in accordance

with law. Therefore, the petition was dismissed as withdrawn with liberty as asked for.

Once the petition had been withdrawn and liberty granted to the complainant/petitioner to take all the pleas at appropriate stage, the second application under Section 319 Cr.P.C. so filed without their being any significant change in circumstances and evidence available on record is certainly not maintainable. The trial Court had disposed of the second application with the following observations:

6. Admittedly the first application under section 319 Cr.P.C moved by prosecution for summoning the concerned accused persons has been dismissed by this court vide order dated 17.4.2017. It is further relevant to mention here that in the first application under section 319 Cr.P.C the applicant/complainant did not disclose about any call conversation of accused Tannu @ Yogesh to prove conspiracy between accused Rampal and Parveen with Tannu @ Yogesh, Ritu and Avdesh. It has been rightly pointed out by learned counsel for accused that in the order dated 18.5.2017 the applicant/complainant had withdrawn the petition filed before Hon'ble High Court with a liberty to take all the pleas at an appropriate stage in accordance with law. From the aforesaid order it can not be construed that the applicant/complainant had been granted liberty to file fresh application under section 319 Cr.P.C before this court. Also in the aforesaid order the order dated 17.4.2017 passed

by this court has also not been set aside. Further in the second application under section 319 Cr.P.C the applicant/complainant did not given reason as to why in the first application under section 319 Cr.P.C the factum of telephonic conversation between accused Tannu @ Yogesh and applicant complainant was not disclosed. In view of above this court find merits in the submissions made by learned counsel for accused that the second application under section 319 Cr.P.C moved applicant/complainant is not maintainable.

Being dissatisfied, the complainant/petitioner approached this Court by way of filing the present petition, notice of which was issued to the respondents, who put in appearance through counsel.

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

The complainant/State has placed reliance upon some call conversation contained in the CD to prove involvement of accused Tannu @ Yogesh, Ritu and Avdesh but unless it could be proved that the voices were those of Tannu @ Yogesh, Ritu and Avdesh, such conversation could not be accepted, as such, much importance cannot be given to that for summoning of such persons as additional accused.

In support of his contention that second application under Section 319 Cr.P.C. is maintainable, learned counsel for the petitioner has pressed into service various authorities i.e. **Mahesh Chandra Sharma**

Versus State of U.P. and others, 2014(16) RCR(Criminal)738, Ashok Singh Versus State of U.P., 2008(14) RCR(Criminal)50 and orders passed by Co-ordinate Bench of this Court in CRR-3886-2015 titled '*Ranvir Singh Saini Versus The State of Haryana and others*' decided on 30.5.2016 and in CRM-M-37845 of 2012 titled '*Raghuwant Singh Versus State of Punjab and another*', decided on 4.2.2014.

However, I find that as already noted supra, there has not been any significant change in circumstances and not enough additional evidence had come on record justifying moving of second application under Section 319 Cr.P.C.

I find that 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.

Therefore, criminal revision petition challenging that order cannot survive and is dismissed accordingly.

19.9.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No