

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

CRR No.321 of 2019 (O&M)

Decided on:- July 02, 2019.

Akbar.

.....Petitioner.

Versus

State of Haryana and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Ms. Rosi, Advocate
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana.

Mr. Muzlish Khan, Advocate
for respondent No.2.

HARI PAL VERMA, J.

The petitioner has filed present criminal revision against the order dated 15.11.2018 passed by learned Additional Sessions Judge, Nuh, whereby the application under Section 319 Cr.PC filed by the prosecution seeking summoning of respondent No.2 Hansira wife of Shakeel as additional accused to face trial, was dismissed.

Learned counsel for the petitioner has argued that respondent No.2 had taken the prosecutrix to her house about 1½ months prior to the alleged incident. She took the prosecutrix to her house, confined her in a room situated on the first floor, where accused Tayyub was already present. Thus respondent No.2 facilitated the commission of offence of rape upon the

prosecutrix and, therefore, she is liable to be summoned to face trial. Accused Tayyub had raped the prosecutrix on the point of pistol, whereas respondent No.2 Hansira was present outside the room.

Learned counsel for the petitioner has referred to the statement (Annexure P-5) made by the victim before the trial Court as PW7, wherein she has specifically named accused Hansira, who played an active role in commission of offence as it is respondent No.2 Hansira, who took the victim to her house on the pretext to answer the call of nature and locked her in a room at the first floor of her house, where accused Tayyub was already present and committed rape upon the victim on gun point. Accused Tayyub being the main accused is already facing trial. It is because of role played by respondent No.2, Hansira, the other co-accused committed rape upon the prosecutrix.

On the other hand, learned counsel for respondent No.2 has argued that the police has already investigated the matter and found the respondent No.2 innocent in the case. There is no new ground available with the petitioner to seek summoning of respondent No.2, who was otherwise found innocent by the police. Moreover, the alleged incident took place on 14.07.2017 and the prosecutrix disclosed the matter before her parents on 19.08.2017, which is sufficient to disbelieve the prosecution version at this stage.

I have heard learned counsel for the parties.

The prosecution has mainly relied upon the statement made by the victim as PW7 and her mother as PW3, who deposed that respondent No.2

Hansira had actively participated in the incident. The matter was thoroughly investigated by the police, who after due investigation and interrogation, had concluded that respondent No.2 Hansira had not participated in the offence and was innocent. While moving the application under Section 319 Cr.PC, the prosecution has not brought on record any substantial piece of evidence which may warrant summoning of respondent No.2 Hansira to face trial. Accused Tayyub against whom the allegation of rape has been made is already facing trial. The power provided under Section 319 Cr.PC is required to be used cautiously and sparingly as it is an extraordinary power in the hand of the Court.

Hon'ble Supreme Court in ***Pepsi Foods Limited and another Versus Special Judicial Magistrate and others-(1998) 5 Supreme Court Cases 749*** has held as under:

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant

and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

In ***Hardeep Singh Versus State of Punjab (2014) 3 SCC 92***, it has been held by the Apex Court that the degree of satisfaction for invoking Section 319 Cr.P.C. should be of more than a prima-facie case, as exercised at the time of framing of charge, but short of satisfaction to an extent that evidence, if not rebutted, may lead to conviction of the person sought to be added as accused.

Therefore, this Court does not find any illegality in the impugned order dated 15.11.2018 passed by the trial Court and no interference is warranted with the same.

Accordingly, affirming the impugned order dated 15.11.2018 passed by learned Additional Sessions Judge, Nuh, present criminal revision, being devoid of any merit, is dismissed.

July 02, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No