

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

CRR No.819 of 2019.

Decided on:- April 03, 2019.

Pooja.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

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

Present:- Mr. Abhimanyu Kalsi, Advocate
for the petitioner.

HARI PAL VERMA, J. (Oral)

The petitioner has filed present criminal revision against the order dated 05.02.2019 passed by learned Additional Sessions Judge, Fast Track Court, Faridabad, whereby the application under Section 319 Cr.PC filed by the prosecution seeking summoning of respondents No.2 to 6 as additional accused, was dismissed.

Briefly stated, FIR No.739 dated 27.07.2017 under Sections 323, 366, 376-D, 384, 450 and 506 read with Section 34 IPC was registered against accused Umesh Kumar alias Bhoot, Arti as well as respondents No.2 to 6 at Police Station City Ballabgarh, District Faridabad. However, during the course of investigation, police found respondents No.2 to 6, namely, Meena, Manvir, Bala, Devender and Bijju as well as accused Arti innocent and the Challan was presented only against accused Umesh Kumar alias

Bhoot. Further, the offence under Sections 376-D and 384 IPC were also deleted and the offence under Section 376 IPC was added in the Challan. Thereafter, the prosecutrix was examined before the trial Court as PW1 where she has named the respondents No.2 to 6 as additional accused.

Learned counsel for the petitioner has argued that the impugned order dated 05.02.2019 passed by the trial Court is liable to be set aside as the prosecutrix while appearing in the witness box as PW1 has specifically named the respondents No.2 to 6. The names of respondents No.2 to 6 were also mentioned by the complainant in the FIR as well as in the statement of prosecutrix recorded under Section 164 Cr.P.C.

I have heard learned counsel for the petitioner.

Perusal of the impugned order dated 05.02.2019 passed by the trial Court shows that no such evidence could be collected by the prosecution so as to establish a strong case for summoning the respondents No.2 to 6 to face trial in the case. Moreover, while appearing as PW1, the prosecutrix did not disclose the name of accused Arti, which she earlier disclosed in her statements Ex.PA and Ex.PB. In her statement Ex.PB, the prosecutrix had stated that Umesh, Manvir and Bijju had entered her room when she was taken to the house of Bijju. The wife of Umesh, namely, Meena also entered the room and thereafter, accused Umesh had committed rape upon her. This fact and the other facts narrated in her statements Ex.PA and Ex.PB were duly investigated by the police and then were also verified by ACP Aman Yadav. Accordingly, the offence under Sections 376-D and 384 IPC were deleted and

the offence under Section 376 IPC was added in the case and report under Section 173 Cr.PC was filed against accused Umesh Kumar only.

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 05.02.2019 passed by the trial Court and no interference is warranted with the same.

Accordingly, affirming the impugned order dated 05.02.2019 passed by learned Additional Sessions Judge, Fast Track Court, Faridabad, present criminal revision, being devoid of any merit, is dismissed.

April 03, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No