

111.

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

CRR-1119-2019 (O&M)

Date of decision: 23.07.2019

SHEELA

... Petitioner

versus

STATE OF PUNJAB AND OTHERS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Anil Kumar Sagar, Advocate,
for the petitioner.

HARI PAL VERMA, J.

CRM-15378-2019

Prayer in this application filed under Section 5 of Limitation Act is for condonation of delay of 7 days in filing the present revision petition.

For the reasons stated in the application, same is allowed and the delay of 7 days in filing the present revision petition is condoned.

CRR-1119-2019

Petitioner has filed the present criminal revision petition impugning the order dated 25.02.2019 passed by learned Judge, Special Court, SAS Nagar, whereby the application filed by the petitioner under Section 319 Cr.P.C. so as to summon the accused Irfan son of Ramzan, Mohammad Garib son of Idras and Kismat Ali @ Pappu son of Abdul Gufar, was dismissed.

The petitioner had moved an application under Section 319 Cr.P.C. so as to summon the additional accused on the ground that during investigation of the present case, SHO, Police Station, Phase-8, Mohali, had moved an application on 06.12.2017 to the effect that in FIR No.411 dated 18.11.2017 under Sections 376D, 376(2)(G), 506 of IPC, Police Station Sector 36, Chandigarh, the aforesaid accused had disclosed before the Investigating Officer that a girl had sat in their three-wheeler which was owned and being driven by Irfan. These accused admitted that they had committed rape with that girl and thereafter committed her murder and threw her body in the jungle of Phase-8, Mohali. In the said case, their confession was recorded by the IO of Chandigarh police. Thereafter, the SHO, Police Station, Phase 8 Mohali moved another application dated 11.12.2017, on the basis of which, the Illaqa Magistrate had given police remand for 5 days of the aforesaid accused. They were interrogated, but after interrogation, the SHO, Police Station, Phase-8, Mohali, got them discharged from the learned Magistrate vide order dated 14.12.2017.

Counsel for the petitioner has argued that SHO was not competent to get them discharged under Section 59 of Cr.P.C. Either they should have been challaned or should have been placed in column No.2. Failure on this count has necessitated the petitioner to move an application under Section 319 Cr.P.C. for their summoning as additional accused to face trial in accordance with law. There was sufficient evidence against the accused to summon, but the learned trial Court dismissed the application while misreading and misinterpreting the law and the evidence brought on record. The accused themselves have admitted that they have committed rape with

the jungle and on the basis of their confession, they should have been summoned to face trial.

Having heard learned counsel for the petitioner, this Court finds that order on an application under Section 319 Cr.P.C. for summoning as additional accused, cannot be passed mechanically. The petitioner has sought summoning of the accused Irfan, Mohammad Garib and Kismat Ali that in FIR No.411 dated 18.11.2017 under Sections 376D, 376(2)(G), 506 of IPC, Police Station Sector 36, Chandigarh, on the ground that the accused during investigation have disclosed that a girl sat in their three-wheeler (belonging to the accused Irfan and being driven by him) and after committing rape upon her, they murdered her and her body was thrown in the jungle of Phase-8, Mohali. The confession in that case was recorded by the IO of Chandigarh Police which led to filing of the application dated 11.12.2017 by the SHO, Police Station, Phase-8, Mohali before the Illaqa Magistrate and accordingly, the Illaqa Magistrate gave police remand of 5 days for these accused. The accused were interrogated and when no evidence was found against them, the SHO moved an application for their discharge and it is thereafter, the learned Magistrate discharged these accused vide order dated 14.12.2017.

Since no material evidence was found against the accused sought to be summoned, this Court finds that there is no illegality in the order dated 25.02.2019 passed by the trial Court, as strong and cogent evidence has not been found against the accused. Even otherwise, merely because they have made a confessional statement before the IO, such statement is hit by Section 25 of the Indian Evidence Act. Merely on the

basis of such confessional statement, the accused cannot be summoned.

No ground for interference is made out.

Dismissed.

(HARI PAL VERMA)
JUDGE

23.07.2019
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No