

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

205

CRM-M-5790-2015

Date of Decision:17.07.2019

Megh Nath and another

.....Petitioners

Versus

State of Punjab and another

.....Respondents

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

Present: Mr. Ishan Gupta, Advocate,  
for the petitioners.

Mr. Sukhbeer Singh, AAG, Punjab,  
for respondent No.1.

Ms. Tarun Preet Kaur, Advocate for  
Mr. Anurag Arora, Advocate,  
for respondent No.2.

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HARI PAL VERMA, J.(Oral)

Petitioners have filed the present petition under Section 482 Cr.P.C. for setting aside the order dated 07.02.2015 (Annexure P-6) passed by learned Additional Sessions Judge, Sangrur, whereby on an application filed by the prosecution under Section 319 Cr.P.C., the petitioners have been summoned as an additional accused to face the trial in the case.

Briefly stated that the FIR No.67 dated 12.07.2014 under Sections 376, 420, 506, 120-B IPC, Police Station Cheema, District Sangrur, was registered at the behest of complainant-Kirna Kaur. As per the FIR, the complainant who is a resident of village Bakhshiwala, Tehsil Sunam, her paternal aunt Rajwinder Kaur @ Raj Begum in connivance with

the petitioners allured her(complainant) to establish physical relation with the accused. Thereafter, Manjot Singh @ Soni established relation with her and the accused including the petitioners used to blackmail her, demanded gold ornaments and cash from her from time to time on the pretext that Manjot Singh @ Soni shall take her abroad and she will have a life like a heaven. The petitioners who are parents of Manjot Singh @ Soni are fully involved in the episode. These persons in connivance with each other used to blackmail the prosecutrix and around 14-15 tolas gold and around Rs.40,000/- to Rs.50,000/- reached to these persons. Her parents came to know about the incident and thereafter, they have solemnized her marriage with Sidhu Khan. In the aforesaid FIR, the police after investigating the matter submitted the challan against Manjot Singh @ Soni and Rajwinder Kaur and placed the petitioners in column No.2. Thereafter, when the prosecutrix was examined in the case, she has deposed against the petitioners, necessitating the prosecution to move an application under Section 319 Cr.P.C. so as to summon the petitioners as an additional accused. It is on this application, the trial Court vide order dated 07.02.2015 summoned the petitioners to face trial as an additional accused.

Learned counsel for the petitioners has argued that trial in the case has been culminated so far as other co-accused Manjot Singh @ Soni and Rajwinder Kaur are concerned and they have been convicted vide judgment dated 15.06.2015. The petitioners are parents of Manjot Singh @ Soni and it is for this reason they have falsely been implicated in the case. As per FIR, the alleged incident of rape had never taken place in the house where the petitioners are residing. The summoning of accused is a serious issue and the accused should not be summoned to face trial in a mechanical

manner. No material is available on record which could even remotely connected the petitioners that they had in any way connived, colluded or conspired with Manjot Singh @ Soni and Rajwinder Kaur. In fact, Rajwinder Kaur is real aunt of the complainant and the allegation if any is against Rajwinder Kaur and Manjot Singh @ Soni. The incident of rape if any is of 07.07.2014, whereas the FIR was registered on 12.07.2014. Thus, there is ordinate delay in lodging the FIR. He further states that there are major contradictions in the statement made by the complainant. Even in the statement made by the prosecutrix under Section 164 Cr.P.C., she has not named the petitioners and it is thereafter while appearing as PW7, she has made allegations against the petitioners. In this manner, she has improved her version as stated in the FIR as well as statement made under Section 164 Cr.P.C. Thus, summoning of petitioners in the case as additional accused is not warranted.

Learned counsel for the complainant has argued that it is in connivance with the petitioners, Manjot Singh @ Soni who is son of the petitioners, committed rape upon the prosecutrix for about three years. She further states that the prosecutrix while appearing as PW7 has rightly named the petitioners as accused in the case as it was well within the knowledge of the petitioners that Manjot Singh @ Soni had established relation with the prosecutrix and had been committing sexual assault upon the prosecutrix repeatedly. She further states that non-mentioning of names does not mean that the petitioners are innocent as no minute details are required to be mentioned in the FIR.

Learned State Counsel submits that the police has already completed the investigation and the petitioners were found innocent.

Heard learned counsel for the parties.

Perusal of initial version as stated in the FIR as well as statement of the prosecutrix recorded under Section 164 Cr.P.C. does not show any allegations against the petitioners. A bare perusal of these documents further shows that the allegation of rape if any is against Manjot Singh @ Soni in connivance with co-accused Rajwinder Kaur. Incidentally, both the accused have already been convicted by the trial court. Merely because Manjot Singh @ Soni happens to be son of the petitioners, is not a ground to summon the petitioners as an additional accused. Moreover, no such instance has come on record to suggest that the other co-accused Manjot Singh @ Soni ever committed rape in the house of the petitioners.

Summoning should not be ordered in a mechanical manner.

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.

In view of above, this Court finds that summoning of a person as an additional accused in a criminal case is a serious matter. The courts are required to be very cautious to deal with the issue as to whether a person is to be added as additional accused or not. Though the power under Section 319 Cr.P.C. to summon additional accused is discretionary, but it should be exercised judicially and very sparingly.

Accordingly, this Court finds that summoning of the petitioners as additional accused to face trial is totally unwarranted. Hence, the present petition is allowed and the order dated 07.02.2015 (Annexure P-6) passed by learned Additional Sessions Judge, Sangrur, whereby on an application filed by the prosecution under Section 319 Cr.P.C., the petitioners have been summoned as an additional accused to face trial, is hereby set aside.

**July 17, 2019**  
seema

**(HARI PAL VERMA)**  
**JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No