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

CRM-M-50906-2018

Date of decision: 06.05.2019

Sikander and others**.....Petitioners****versus****Bala Devi and another****.....Respondents****CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present: Mr. Sandeep Arora, Advocate for
Mr. Parveen Kumar Gupta, Advocate
for the petitioners.

RAJBIR SEHRAWAT, J.(ORAL)

This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of the order dated 19.07.2018 passed by the Revisional Court reversing the order dated 12.10.2016 passed by the trial Magistrate, Kurukshetra and remitting the case to the trial Court for a fresh decision on an application under Section 319 Cr.P.C.

The allegations as contained in the FIR are that complainant-Bala Devi was caused injuries. The complainant was medically examined as well. However, after investigating the FIR, the police had not filed challan against the present petitioners.

Thereafter, the evidence of prosecution was started before the Trial Court. During evidence, the complainant was examined as PW-3. She had reiterated her version; regarding having been caused injuries by all the persons, including the present petitioners. The other witness, Rakesh Kumar,

PW-5 was also examined to corroborate the testimony of the complainant. Dr. A.C. Nagpal was examined as PW-4 who had proved the injuries on the body of the complainant. After leading this evidence, an application was filed under Section 319 Cr.P.C. for summoning the petitioners as additional accused to face the trial with other co-accused. However, other application filed by the prosecution was rejected by the trial Court vide order dated 12.10.2016. The complainant filed a revision petition against the order of the trial Court. The Revisional Court allowed the revision petition filed by the complainant and directed the trial Court to re-consider the case and to decide the application under Section 319 Cr.P.C. expeditiously. However, before any order could be passed by the Trial Court as per the direction of the revisional Court the order of the revisional Court has been impugned by the petitioners by way of the present petition.

In support of his case, learned counsel for the petitioners has submitted that by partly changing the version, the complainant had made a supplementary statement during the investigation in which she had denied the allegations; qua snatching of the chain by petitioner No. 1; as well as regarding the role of Priyanka, the co-accused. Therefore, merely because she has made the statement before the trial Court repeating the original allegations against the petitioners is not sufficient to summon the petitioners as additional accused by exercising the powers of Section 319 Cr.P.C. It is further submitted that the story of the prosecution, otherwise was also, is improbable because once the complainant has said that she had become unconscious then she could not have deposed anything about the subsequent situation prevalent thereafter. Hence, the evidence on record is not sufficient to sustain the order under Section 319 Cr.P.C.

However, this Court does not find any substance in the argument of learned counsel for the petitioners. The test for exercising the powers under Section 319 Cr.P.C. has been laid down by the Hon'ble Supreme Court rendered in the case of ***Hardeep Singh Versus State of Punjab and others, 2014 (1) RCR (Criminal) 623***. The relevant para in this regard of the judgment of Hon'ble Supreme Court is as under:-

“99. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under [Section 319](#) Cr.P.C.”

Keeping in view the above legal proposition, this Court finds that the complainant has appeared before the trial Court as PW-3 and has made a statement on oath; disclosing therein that all the petitioners were very much the participants in causing injuries to her. The same version has been corroborated even by PW-5, who has also deposed all facts that all the petitioners are clearly involved in the incident. Not only this, prosecution has also examined PW-4, Dr. A.C. Nagpal; who medically examined the complainant. The said doctor has proved injuries upon the complainant as well. Hence, it cannot be said that the above said evidence can not be sufficient to justify an order under Section 319 Cr.P.C. qua summoning the petitioners as additional accused. Therefore, the order passed by the Revisional Court does not call for any interference.

Although learned counsel for the petitioners has also argued that the complainant had made a supplementary statement during the investigation denying any snatching of chain by petitioner No.1 and therefore, she cannot be believed, however, this Court does not find any substance in the argument made by the learned counsel for the petitioners. The statement made before the Court shows that she has reiterated her version qua even snatching of the chain by petitioner No. 1. The veracity of the statement recorded by the Investigating Officer during the investigation has been put to question by the statement made by the complainant on oath before the Court. In case of above two statements, the Court has to go with the later one for proceeding further in the matter.

In view of the above, this Court does not find any ground for interference, Hence, the present petition is dismissed.

However, nothing observed hereinabove shall be taken as expression on merits of the case; during the course of trial.

6th May, 2019

shabha

**[RAJBIR SEHRAWAT]
JUDGE**

Whether speaking/reasoned - Yes

Whether reportable - Yes