

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

CRR No.2950 of 2015 (O&M)
Date of decision: 27th February, 2019

Ranjit Kaur & another

... Petitioners

Versus

State of Punjab & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Amit Dhawan, Advocate for the petitioners.

Mr. Shiv Kumar, Advocate for the respondents.

FATEH DEEP SINGH, J.

Present petitioners Ranjit Kaur and her husband Manjit Singh have through this invocation by way of petition under Section 482 Cr.P.C. sought to get an order of learned Additional Sessions Judge, Jalandhar dated 13.04.2015 set aside while allowing the application under Section 319 Cr.P.C. of the prosecution and whereby petitioners have been ordered to be summoned as additional accused.

Heard Mr. Amit Dhawan, Advocate for the petitioners; Mr. Shiv Kumar, Advocate for the respondents and perused the records.

Present case was got registered on the statement of grandmother of a girl aged around 17 years, a student of 10+1 class. It is alleged by the complainant that during the intervening night of 18th and 19th November, 2014 when she woke up, she discovered that the prosecutrix (granddaughter) was missing. Upon enquiry, it was revealed

that the granddaughter of the complainant had been enticed by the accused Ravinder Singh alias Ravi, son of the present petitioners, on the instigation of the petitioners. It is claimed that the granddaughter while going away had taken gold ornaments besides an Aactiva scooter. Thereafter the present case was got registered in which the present petitioners were found innocent and placed in column No.2. It was on the statement of the prosecutrix as PW1 on application of the prosecution, the Court had allowed the same and thus, the present petition challenging the order has come about.

Appreciating the submissions of the two sides, the FIR got registered after two days of the alleged occurrence as per the records only states on the basis of hearsay that upon enquiries the complainant came to know that her granddaughter has been taken away by accused Ravinder Singh alias Ravi and has stated that it was at the instigation of his mother and father. It is the own stand of the prosecution and is there in the records that this stand has come about belatedly and on hearsay and thus, being inadmissible piece of evidence, needs to have full corroboration by other means. What instigation or prompting has come about by the petitioners, is nowhere illustrated. Merely, because a young boy and a girl, who are lovelorn, have run away does not necessitate that parents of the boy had instigated so. It is further in the statement of the alleged victim as PW1 that it was on the asking of the accused Ravinder Singh alias Ravi she took the Scooter around 11:30/12:00 p.m. on the night of

the occurrence and where the present petitioners met them and at the asking of principal accused Ravinder Singh alias Ravi, she handed over her jewellery, cash and keys of the scooter to the mother of the principal accused, and that father of the accused made her drink tea and she became unconscious. In the investigation of the prosecution by way of statement of the prosecutrix recorded under Section 164 Cr.P.C. before the learned Judicial Magistrate, there is no attribution to these petitioners and she only states that mother of Ravinder Singh alias Ravi received ornaments and cash along with the keys of the scooter from her and that father of the boy administered her tea and she became unconscious. Furthermore, the admitted document of the prosecution which is a memo of production of the gold articles dated 08.01.2015 shows that one Prince had produced before the police gold ornaments stating that one Jaspal Sidhu alias Jassa along with the principal accused Ravinder Singh alias Ravi (who were accompanied by one girl, and has named the prosecutrix) came to his shop and sold the same while saying that they have some family circumstances. The impugned order shows that the learned Court below only on the premise that the girl as PW1 has stated names of the present petitioners, has drawn the conclusion that the same shows involvement of the petitioners in the commission of offence and has held that it was sufficient evidence against these persons to summon them as additional accused.

It needs to be reiterated here and could not be differed by the learned counsel representing the two sides that after the ratio of **‘Hardeep Singh v. State of Punjab’ 2014(1) RCR(Criminal) 623**, the Hon’ble Supreme Court in the case of **‘Brijendra Singh & others vs. State of Rajasthan’ 2017(3) RCR(Criminal) 374**, has clearly taken note of the ambit of evidence and has recapitulated the principle laid down in **Hardeep Singh’s case (ibid)** holding that no doubt such evidence that has surfaced in examination in-chief, without cross-examination of witnesses, can also be taken into consideration; however, holding that since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It was cautioned by their Lordships that the degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge-sheet was filed. It was held by their Lordships that only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised and it is not to be exercised in a casual or a cavalier manner; and therefore, laid down the ratio that the prima facie opinion which is to be formed, requires stronger evidence than mere probability of his complicity.

From this all, what has been put up before the Court and falls within the ambit of evidence, the testimony of the complainant is more

based on hearsay and where no specific role is attributed to the petitioners and the only semblance of evidence is statement of the girl as PW1 and which is quite contradictory to the own documents relied upon by the prosecution, especially the memo of recovery. The same substantially erodes the credibility of this PW. Thus, a serious doubt creeps in the mind of the Court over the truthfulness and veracity of these allegations against the petitioners and merely because at a subsequent stage prosecution has managed to procure statement of the girl, who at midnight had walked out of her home and thereafter eloped with a boy and her testimony of having gone to a shop at dead of the night and giving ornaments, certainly improbabilises the allegations and what one can construe is that the boy and the girl, who were in a relationship, had devised a way to elope and subsequently as an arm-twisting tactic that such an evidence has been sought to be brought by the complainant side for a motivated cause. The impugned order certainly has run into an error and cannot sustain and therefore, is set aside by way of acceptance of the present revision petition.

(FATEH DEEP SINGH)
JUDGE

February 27, 2019

rps

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