

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

CRR No.3147 of 2015

Date of decision: 16th September, 2019

Rajinder Kaur

... Petitioner

Versus

State of Punjab & others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Bikramjit Singh Baath, Advocate for the petitioner.

Ms. Sakshi Bakshi, Assistant Advocate General, Punjab
for respondent No.1/State.

None for respondent No.2.

Mr. Arnav Sood, Advocate for respondent No.3.

FATEH DEEP SINGH, J.

The complainant Rajinder Kaur has come up in this petition by invoking jurisdiction of the Court by virtue of Section 401 Cr.P.C. against orders dated 31.07.2015 whereby application moved by the prosecution under Section 319 Cr.P.C. for summoning of Moti and Jhana, respondents No.2 and 3 respectively, as additional accused stood declined and dismissed.

Upon hearing Mr. Bikramjit Singh Baath, Advocate for the petitioner; Ms. Sakshi Bakshi, Assistant Advocate General, Punjab on behalf of the State/respondent No.1; Mr. Arnav Sood, Advocate for respondent No.3 and on perusal of the records.

The complainant Rajinder Kaur has got recorded FIR bearing No.12 dated 14.03.2014 under Sections 363, 366, 376, 506, 120-B IPC at Police Station Dera Baba Nanak. In the FIR, the complainant has levelled specific allegations that on 17.02.2014 while she was strolling on the passage to her dera (dwelling unit), three young men came and out of whom she identified one of the accused as Jaspreet Singh and the complainant alleged that this accused placed handkerchief on her face and thus, she could not raise hue and cry and this accused was accompanied by two more persons and all the three lifted the complainant in a car parked nearby and forcibly took her to Hoshiarpur, where maternal aunt of Jaspreet Singh resides, with the intention to forcibly marry the complainant. Out of these two young persons accompanying Jaspreet Singh, she named one person as Vicky alias Jessy son of maternal aunt of the principal accused Jaspreet Singh and had identified the third as a friend of Vicky. Thereafter, in her stand taken under Section 164 Cr.P.C. before learned Judicial Magistrate 1st Class, Batala, the complainant has named Jaspreet Singh, Vicky alias Jessy and Vicky's friend Jhana, the present private respondent No.3. Subsequent to this, in her testimony as PW-1, complainant Rajinder Kaur in no uncertain terms, has named Jaspreet Singh, Vicky alias Jessy and Vicky's friend Jhana as the persons responsible for forcibly abducting her at the time of this occurrence.

The Hon'ble Supreme Court in '**Hardeep Singh v. State of Punjab**' 2014(3) SCC 92, has observed as under:-

“Question Nos.1 & III: Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

*A. In **Dharam Pal's case**, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused.*

Section 319 Cr.P.C. significantly uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course

of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the chargesheet.

In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No. II: Q.II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. IV: Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the

accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.”

In the instant case, learned Additional Sessions Judge, Gurdaspur while passing the impugned order dated 31.07.2015 instead of following the principles laid down in **Hardeep Singh’s case (ibid)**, has sought to critically evaluate the evidence rather than go by the prima facie allegations, holding that the complainant has been making improvements in her version and is misleading the Court quite in oblivion that the matter is still under trial and commenting upon the witness, who happens to be the victim as well as the complainant, would be undesirable as it would be prejudicial to the administration of fair trial.

Since right from the inception of the allegations by way of FIR, the statement of the complainant under Section 164 Cr.P.C. and subsequently in her testimony as PW-1, it has come so as to the three accused who were instrumental in her abduction; how the Court below had termed such deposition to be untrustworthy, certainly is highly uncalled for. Thus, in the light of the same, the impugned findings are apparently misinterpretation of the evidence on the records and so are the findings which are legally infirm, necessitating intervention by this Court by way of allowing the present revision petition and setting aside the impugned findings.

The revision petition stands allowed in those terms.

(FATEH DEEP SINGH)
JUDGE

September 16, 2019

rps

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No