

202.

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1483-2017

Date of decision: 03.09.2019

SANDEEP @ SAMMU

... Petitioner

versus

STATE OF HARYANA & ANR

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Harish Nain, Advocate,
for the petitioner.

Ms. Gaganpreet Kaur, AAG, Haryana,
for respondent No.1.

Mr. Inderjit Sharma, Advocate,
for respondent No.2.

HARI PAL VERMA, J.(Oral)

Petitioner-Sandeep @ Sammu has filed the present revision petition impugning the order dated 07.04.2017 passed by the learned Additional Sessions Judge, Palwal, whereby on an application filed by the prosecution under Section 319 Cr.P.C., the petitioner has been summoned to face trial as an additional accused.

On 25.04.2017, while issuing notice of motion in the case, this Court passed the following order:-

“Counsel for the petitioner inter alia contends that the trial Court has summoned the petitioner to face trial along with accused Surender against whom allegations with regard to sexual assault on the prosecutrix have been levelled but there is no such plea raised by the prosecution that the petitioner also committed sexual assault upon the prosecutrix as the only

*allegation against the petitioner is that he was also present at the spot. Another submission made by counsel is that the trial Court has summoned the petitioner as an additional accused by holding that complicity of the proposed accused is prima facie made out whereas in view of the judgment passed by the Constitution Bench of Hon'ble the Supreme Court of India in **Hardeep Singh Vs. State of Punjab and others, 2014(1) RCR (Criminal) 623** satisfaction to be recorded for summoning an additional accused is more than that of the prima facie case. In addition, it is argued that the trial Court has sought to secure presence of the petitioner through process of non-bailable warrants at the first instance without any summons being issued for his service or recording any satisfaction that the petitioner is absconding and is evading appearance in the Court. In this regard, reference has been made to judgment of Hon'ble the Supreme Court **Vikas Vs. State of Rajasthan, 2013(4) RCR (Criminal) 948**.*

Notice of motion for 19.07.2017.

In the meantime, operation of the impugned order shall remain stayed."

Counsel for the petitioner has argued that the present case was registered on the statement of the prosecutrix wherein she has made a statement that on 06.11.2016 at about 7.30 PM, she went to a shop for fetching shampoo and sugar, but while she was returning, three boys, namely, Surender son of Ami Chand, Sammu (the petitioner herein) and Lala, gripped her in the street and dragged her to an abandoned house. The co-accused Surender gagged her mouth with a piece of cloth and raped her. The co-accused i.e. the petitioner and Lala were present there. However, when her cousin Harish came there, all the three accused ran away from there and she was brought back to her house.

Counsel for the petitioner has further argued that after registration of aforesaid FIR, the case was duly investigated and the petitioner was found innocent. A bare perusal of the statement of the prosecutrix, so recorded, does reflect that no role has been attributed to the petitioner as in what manner he has participated in the crime. The statement of the prosecutrix is completely vague. She has made allegation that all the three accused gripped her and dragged her towards an abandoned house, but in what manner she was gripped by the accused, is totally missing. Moreover, the other accused Surrender against whom there are allegation of commission of rape, is already facing trial. There is no such material before the prosecution so as to seek summoning of the petitioner.

Further, the statement of Harish, who is the cousin of the prosecutrix, recorded under Section 161 Cr.P.C. nowhere suggests that the petitioner was ever present at the scene of alleged occurrence, though he had stated that his sister (prosecutrix) had told him that Surrender has committed rape upon her in an abandoned house.

Counsel for the complainant has argued that since the petitioner was present at the scene of occurrence, his role has been explained by the prosecutrix and, therefore, the petitioner is required to face trial. It is only during trial, it would be established as to whether the petitioner has played role in the crime or otherwise.

I have heard counsel for the parties.

Section 319 of Cr.P.C. reads as under:-

“319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an

offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under subsection (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

Summoning of an accused is a serious offence. The 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.

The very FIR which was registered on the statement of the prosecutrix nowhere suggests the role attributed to the petitioner. The statement of the prosecutrix is completely silent and rather vague as in what manner, either of the accused, gripped her and each of the accused dragged her to an abandoned house, though she has named the other accused, Surender, that he committed rape upon her. Even Harish (cousin brother of the prosecutrix) who statedly appeared at the scene of the occurrence, in his statement recorded under Section 161 Cr.P.C. has not supported the case of the petitioner remotely.

In view of above, this Court finds that the impugned order dated 07.04.2017 cannot sustain in the eyes of law.

Accordingly, the present petition is allowed and the order dated 07.04.2017 is hereby set aside.

(HARI PAL VERMA)
JUDGE

03.09.2019
sanjeev

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