

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 2599 of 2018 (O&M)
Date of decision : April 29, 2019

Sukhdev Singh and others

....Petitioners

versus

State of Punjab

....Respondent

Coram: Hon'ble Mr. Justice Fateh Deep Singh

Present : Mr. Tarun Jhatta, Advocate, for the petitioners
Mr. Avtar Singh Sandhu, Addl. AG Punjab for the State
Mr. DS Gandhi, Advocate, for the complainant

Fateh Deep Singh, J. (Oral)

The present revision petition with the aid of Section 401 IPC has come about by newly added accused-petitioners Sukhdev Singh, Paramjit Kaur, Kuldeep Singh and Seema Rani whereby all of them have challenged the impugned orders dated 20.7.2018, Anneuxre P/1, of the court of learned Additional Sessions Judge, Moga summoning them as additional accused.

Heard Mr. Tarun Jhatta, Advocate, for the petitioners; Mr.

Avtar Singh Sandhu, Addl. AG Punjab for the State; Mr. DS Gandhi, Advocate, for the complainant and perused the records.

The allegations in the FIR has come about by complainant Rajiv Sharma father of girl aged around 15 years who happens to be the student of 9th class. In the complaint the complainant alleges that he and his wife are teachers and on 4.10.2017 when he came from school around 2.00 PM, he found that the victim was not present at home of which fact he informed his wife. Subsequently it transpired that one Jaspreet Singh alias Ghulla in connivance with his family consisting of Sukhdev Singh, Paramjit Kaur, Kuldeep Singh and Seema Rani siblings of Jaspreet Singh, present petitioners have connived with each other and kidnapped his daughter from Nature Park, Moga, on the basis of which the present FIR was got registered. Subsequently, during investigations in challan under Section 173 Cr.P.C. the present petitioners were found innocent. After recording statement of complainant Rajiv Sharma as PW1 and of the victim as PW2, the impugned orders were passed and hence aggrieved over the same, the present revision petition has come about.

FIR (Annexure P/6) clearly illustrates that principal accused Jaspreet Singh alias Ghulla along with present accused-petitioner in connivance with each other had kidnapped the victim.

Thereafter in his deposition the complainant as PW1 has brought about and reiterated these allegations. Further-more the victim as PW2 has gone a bit further and alleged that accused Jaspreet Singh, 15 to 20 days prior to the registration of the present case took her to a desolate building near the Canal adjoining Dana Mandi and against her wishes defiled her and similarly on 4.10.2017 the accused enticed her and committed rape upon her and rather had gone to the extent of levelling allegations that the present petitioners have even threatened her and under pressure obtained her previous statement.

Mr. Tarun Jhatta, learned counsel for the petitioners had placed reliance on **Mohd. Shafi vs Mohd. Rafiq and another, 2007 (2) R.C.R. (Criminal) 762; Michael Machado & Anr. Vs Central Bureau of Investigation & Anr., 2000(2) R.C.R. (Criminal) 75; Mrs Poonam vs State of Punjab and another, 2007(2) R.C.R. (Criminal) 712 and Isham Singh and others vs State of Haryana, 2004(2) R.C.R. (Criminal) 279** to hammer home the point that the court cannot summon the person on the basis of examination-in-chief of PW which has been sought to be controverted from the side of the respondents.

Appreciating the submissions in a subsequent view reported in **Hardeep Singh vs State of Punjab and others, 2014(1) R.C.R. (Criminal) 623**, the Hon'ble Apex Court in Five Judges Bench

view comprehensively thrashed out the ambit of Section 319 Cr.P.C. holding that the court has power to summon a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted as additional accused and detailing at length the powers of the Court under Section 319 Cr.P.C. have held after referring to catena of case law that even on the basis of examination-in-chief the court can proceed against a person as long as the court is satisfied that the evidence appearing against such person is such that it *prima-facie* necessitates bringing such person to face trial and therefore, were of the view that powers under Section 319 Cr.P.C. can be exercised at the stage of completion of examination-in-chief and the court need not wait till the time the evidence is tested on cross-examination. In the impugned findings the court of learned Additional Sessions Judge had divulged at length the testimonies of the prosecution witnesses PW1, the complainant, victim as PW2 and has found abundant evidence as to the complicity of the present petitioners in the commission of offence along with principal accused and has held that there was sufficient ground to summon these persons as additional accused to face trial.

Mr. Tarun Jhatta, learned counsel for the petitioners could not convince this Court that illegality or perversity has come about in these findings by the court below. The exercise of revisional

powers are restricted one and there being no apparent perversity or miscarriage of justice does not calls for interference by this Court. Finding no merit in the instant revision petition, the same stands dismissed.

April 29, 2019
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(Fateh Deep Singh)
Judge

Whether speaking/reasoned ?
Whether Reportable ?

Yes/No
Yes/No