

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

1. CRR No.3640 of 2018 (O&M)

Himanshu

... Petitioner

Versus

State of Haryana & another

... Respondents

2. CRR No.3754 of 2018 (O&M)

Parshant

... Petitioner

Versus

State of Haryana & another

... Respondents

Date of decision: 14th March, 2019

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Manoj Chahal, Advocate for the petitioner
(in CRR No.3640 of 2018).

Mr. Sunny Bhardwaj, Advocate for the petitioner
(in CRR No.3754 of 2018).

Mr. Amrik Narwal, Dy. Advocate General, Haryana
for respondent No.1/State.

Mr. Sushil Sheoran, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

Since both these criminal revisions, one by accused Himanshu and the other by accused Parshant, have come about as a consequence of same very order dated 10.10.2018 and in view of the consanguinity of facts and law, are thus being taken up for disposal together.

Upon hearing Mr. Manoj Chahal and Mr. Sunny Bhardwaj,
Advocates for the petitioners; Mr. Amrik Narwal, Dy. Advocate General,

Haryana for the State/respondent No.1; Mr. Sushil Sheoran, Advocate representing respondent No.2 and on perusal of the records.

In a trial of sessions case bearing No.106/2017 titled ‘State of Haryana v. Rajat, by way of FIR No.709 dated 29.10.2017 under Sections 341, 354, 354-D, 506 IPC and Section 12 of the Protection of Children from Sexual Offences Act, 2012 pertaining to Police Station City Bhiwani, during the course of trial an application under Section 319 Cr.P.C. was moved by the prosecution side for summoning of Himanshu and Parshant present petitioners along with Hemant as additional accused to face trial along with the accused already facing trial, as sufficient evidence had come about against them. It was through impugned orders dated 10.10.2018, the Court of learned Sessions Judge, Bhiwani allowed the application and summoned these persons as additional accused. That is how the present criminal revisions with the aid of Section 401 Cr.P.C. have come about.

Appreciating the submissions of the two sides, the Hon’ble Supreme Court in the case of ‘**Hardip Singh v. State of Punjab and others**’ 2014(1) RCR (Criminal) 623 has detailed at length the scope and extent of the powers of a Court to arraign any person as additional accused during inquiry or trial as contemplated under Section 319 Cr.P.C. Relevant observations of the Hon’ble Supreme Court are reproduced as follows:-

“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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."

Going through the present case, the victim as PW4 has detailed as to how, while she along with her brother was going on a scooty to fetch milk, Hemant friend of Rajat who was on a motorbike, pulled the victim from the scooty and that near the temple, Rajat was in a car and hit the car in their scooty as a consequence of which the victim fell down and Rajat forcibly pulled the victim into the car and all these accused fled from the spot. It is categorically stated that Rajat along with his friends Hemant and present petitioners Himanshu and Parshant used to tease her and pass obscene comments and which had been continuing for the last six months and fed-up with the same on 29.10.2017 the victim

moved a complaint against these persons. The victim has also produced her statement recorded under Section 164 Cr.P.C. on 30.10.2017.

As has been contended by learned counsel for the petitioners that the Deputy Superintendent of Police during the course of verification of the investigations has held that except Rajat no other accused was involved; however, scanning the evidence as has been submitted by the learned counsel for the respondents that in her statement under Section 164 Cr.P.C. the girl has named all these persons to be responsible for this episode and even in her testimony as PW4 has detailed it so, could not be refuted by learned counsel for the revisionists. Furthermore, the victim in her initial stand in the complaint has also detailed the names of these persons to be the perpetrators of this crime and has specifically named Himanshu, Hemant, Parshant and Rajat as the persons who used to follow her and carry on obscene activities in front of her and that one of them Himanshu is resident of her street. There is clear-cut attribution to each of these persons in the commission of offence. The Court below has rightly placed reliance on **Hardeep Singh's case (ibid)** by holding that only a prima facie case is to be established from the evidence led before the Court and need not be tested on the anvil of cross-examination, and has rightly applied the said proposition of law to the present case. Though on behalf of the petitioners, reliance is sought to be placed on '**Jai Singh vs. State of Haryana and others**' 2016(2) Law Herald 1459, however, on account of factual disparity the cited ratio does not come to the aid of the petitioners, where too the ratio laid down in **Hardeep Singh's case (ibid)**

has been considered by Lordship. Learned counsel for the petitioners could not convince this Court as to any illegality or perversity in the findings of the Court below and thus, the same needs to be upheld. Finding no merit, both the present revision petitions stand dismissed.

(FATEH DEEP SINGH)
JUDGE

March 14, 2019

rps

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