

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRR-2473-2019 (O&M)
Date of Decision:-26.11.2019

Shakila Bano

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Sachin Mittal, Advocate for the petitioner.

GURVINDER SINGH GILL, J.(Oral)

1. The petitioner has approached this Court assailing order dated 17.5.2019, whereby an application filed on behalf of the prosecution seeking summoning of Mohd. Aosh i.e. elder brother of the main accused, has been declined.
2. The allegations, in nutshell as per FIR, are that on 22.6.2018, the complainant got in touch with Mohd. Insaaf through social media (Facebook) and started chatting with him and during the course of which said Mohd. Insaaf proposed marriage with the complainant and on the basis of the said proposal enticed her to meet him. It is alleged that despite the unwillingness of the complainant, said Mohd. Insaaf established forcible physical relations with her. It is further alleged that subsequently he took her to Ajmer, where they stayed in a hotel for two days, where also he established physical relations with her. Later after returning to Gurugram said Mohd. Insaaf is alleged to have established forcible physical relations with her from 3.1.2017 to 6.1.2017 and also from 12.1.2017 and 10.8.2017

by holding out a false promise of marriage. It is further alleged that later said Mohd. Insaaf did not honour his promise.

3. It is further alleged that on 10.8.2017, Mohd. Insaaf told her that his brother Mohd. Aosf would help him in performing marriage. It is also alleged that said Mohd. Aosf had snatched an amount of ₹3.5 lacs, which were lying in a wooden almirah. It is also alleged that later she was unable to contact Mohd. Insaaf for several days and that ultimately when she was able to contact him on 3.3.2018 she asked him to honour his promise of marriage, but he told the complainant to meet his brother. Consequently she reached Mugal Sarai Station, Chandoli, U.P., where she met Mohd. Insaaf, who took her on a motorcycle to a house where Mohd. Aosf was present. After leaving the complainant there, Mohd. Insaaf left from that place. It is alleged that Mohd. Aosf, however, misbehaved with her and threw her forcibly on a bed and after removing her clothes he alongwith one more person gagged her mouth and inserted a finger in her private parts. Later Mohd. Aosf called Moh. Insaaf telephonically asking him to drop the prosecutrix at railway station. It is also alleged that while she was leaving, Mohd. Aosf snatched her purse containing an amount of ₹4,500/-, her ID proof and other documents. Later with the help of some other persons she was able to return back home to Gurugram but she did not report the matter immediately to the police due to fear.
4. The matter was investigated by the police and upon conclusion of investigation, challan was presented against Mohd. Insaaf while Mohd. Aosf was kept in column No.2. After recording of statement of the complainant,

an application was moved by the prosecution under Section 319 Cr.P.C., which has been declined vide impugned order dated 17.5.2019.

5. The learned counsel for the petitioner/complainant has submitted that since specific and categoric allegations have been levelled in the FIR, which have been reiterated by the complainant when her statement in terms of Section 164 Cr.P.C. was recorded and also when she stepped into witness-box, during the course of trial, the Trial Court ought to have summoned Mohd. Aosf and that the Trial Court erred in declining the application under Section 319 Cr.P.C.
6. I have heard the learned counsel for the petitioner.
7. A perusal of the FIR would reveal that the prosecutrix was mainly aggrieved on account of the fact that Mohd. Insaaf, with whom she had been having physical relations, had later refused to marry her. The police upon investigation came to the conclusion that there was no substantial evidence to establish the involvement of Mohd. Aosf, brother of the main accused, and had thus kept him in column No.2.
8. Having regard to the facts and circumstances of the case, this Court would rather be wary of summoning an additional accused whose false implication being brother of main accused cannot be ruled out. In any case, since the police during investigation did not find sufficient evidence to connect Mohd. Aosf, the Trial Court had proceeded to dismiss the application. This Court does not find any infirmity in the impugned order and the same is upheld. There petition is sans merit and is dismissed.

26.11.2019

pankaj

(Gurvinder Singh Gill)
Judge