

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

110

CRR-3124-2019(O&M)

Date of Decision:11.12.2019

Moti Lal

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Sushil Sheoran, Advocate,
for the petitioner.

HARI PAL VERMA, J.(Oral)

Petitioner has filed the present revision petition impugning the order dated 01.11.2019 passed by learned Additional Sessions Judge, Bhiwani, whereby the application filed by the complainant-prosecutrix under Section 319 Cr.P.C., so as to summon Rajat son of Satish, Parshant son of Devender, Himanshu son of Dinesh and Sunny son of Krishan as additional accused, was dismissed.

Learned counsel for the petitioner has argued that the trial Court has totally ignored the evidence produced on record and passed the order on the basis of DSP's report, whereby respondent Nos.2 to 5 (additional accused sought to be summoned to face trial) have been declared as innocent. The trial Court has not discussed the material brought on record. The trial Court has ignored the statement of the prosecutrix made on 20.11.2018 under Section 164 Cr.P.C. The victim while appearing as PW-9

has specifically named respondent Nos.2 to 5. The trial Court has not

discussed the evidence brought on record. Since the prosecutrix has made statement under Section 164 Cr.P.C. and while deposing in the court as PW-9 has levelled allegations against these accused, they were required to be summoned to face trial. He refers to the judgment dated 16.05.2019 passed by a Coordinate Bench of this Court in CRM-M-34237-2017, **Sukhmander Singh and another Versus State of Punjab and another**, to contend that the trial Court while declining the application under Section 319 Cr.P.C. was required to consider the statement of the prosecutrix recorded under Section 164 Cr.P.C. and the statement of the victim while appearing as PW9, but the same have not been considered.

Heard learned counsel for the petitioner.

No such material has been produced on record, so as to establish the involvement of the accused now sought to be summoned. Apart from the fact that the incident in the case has occurred somewhere in June 2017 and the FIR was registered on 14.11.2018 that too of missing. Statement of the prosecutrix under Section 164 Cr.P.C. was recorded on 20.11.2018. The said statement was recorded after more than 1½ years. Moreover, the trial Court has considered the said application and has observed that even the polygraphy test of the accused has been conducted and they have been found innocent. The relevant discussion by learned Additional Sessions Judge, Bhiwani, reads as under:-

“After hearing these arguments, the court thought it fit and proper to call that DSP in the court who, during his investigation, had found the proposed accused persons as innocent. DSP Jagat Singh has appeared in the court and has intimated that not only he found these proposed accused persons innocent rather after his investigation, on the complaint of the complainant side, the matter was further

investigated by DSP Kuldeep Singh Beniwal, who has also found the proposed accused persons as innocent. Even the polygraph test of some of the proposed accused persons has been conducted and as per that also, the proposed accused persons have been found innocent. The court also perused the zimmies recorded by the DSP during the course of investigation and has also perused the CCTV footage of the Gym, where proposed accused Sunny is seen turning out the prosecutrix and two other accused persons out of his Gym and when they did not get entry into his Gym even after waiting for very time, the prosecutrix has now leveled allegations involving him also. Even the call details of these proposed accused persons have been collected during the course of investigation and from those also, their involvement in the occurrence was not found. This court does not want to comment anything on the deposition of the prosecutrix as PW9 lest it may prejudice the case of either side but one thing which is clear is that even one of the proposed accused persons, namely, Chhotu @ Pankaj has not been found innocent by the police and the investigation against him is still pending. When the court asked from the learned Public Prosecutor for the State that how the present application has been moved for summoning, even this accused (Chhotu @ Pankaj) under Section 319 Cr.P.C., he stated that the application against proposed accused Chhotu may be dismissed.”

Considering the fact that the prosecutrix has made allegation of rape against the accused, now sought to be summoned, in June 2017, FIR was registered on 14.11.2018 and statement of the prosecutrix under Section 164 Cr.P.C. was recorded on 20.11.2018, case of the prosecutrix is nothing but an attempt to enlarge the number of accused, which this Court cannot permit her in the absence of some material to support.

Summoning of additional accused is a serious issue and the

court must not summon the accused in a mechanical manner. 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.

In view of the above, this Court finds that summoning of a person as an additional accused in a criminal case is a serious matter. The

person is to be added as additional accused or not. Though the power under Section 319 Cr.P.C. to summon additional accused is discretionary, but it should be exercised judicially and very sparingly. The petitioner has failed to adduce any material so as to summon the accused sought to be summoned in the case.

Accordingly, this Court does not find any illegality in the order passed by the court below.

The present revision petition is hereby dismissed.

December 11, 2019
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No