

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

CRR No.3149 of 2019.

Decided on:- November 25, 2019.

Tosha Rani.

.....Petitioner.

Versus

State of Punjab and others

.....Respondents.

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

Present:- Mr. L.S. Sidhu, Advocate
 for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present criminal revision against the order dated 27.08.2019 passed by learned Additional Sessions Judge, Ferozepur, whereby the application under Section 319 Cr.PC filed by the prosecution seeking summoning of co-accused Satnam Singh son of Gurbachan Singh, Harmeet Singh son of Jangir Singh, Mohinder Kaur wife of Jangir Singh, Sham Singh son of Gurbachan Singh, Chhinda Singh @ Surinder Singh son of Gurbachan Singh and Karnail Singh son of Sajjan Singh, to face trial under Section 376 IPC along with other accused, was dismissed.

Briefly stated, an FIR No.135 dated 11.08.2018 under Sections 376-D, 366, 342, 323, 328 and 506 IPC was registered at Police Station Guru Harsahai, District Ferozepur at the behest of the petitioner-complainant. As per the FIR, house of the complainant is situated outside the village at Dhani and the house of Sukhdev Singh son of Jangir Singh is situated in front of her house. Sukhdev Singh had bad eye on the complainant and wanted to defame

her. For this reason, her in-laws' family used to quarrel with her due to which she had gone to her parental house at village Kothe Killi Wala.

The complainant had further alleged that on 20.02.2018, when the complainant was standing at village Mohan Ke Hithar for going to her in-laws' house, at about 06.30 P.M., one Trax vehicle stopped in front of her. Sukhdev Singh son of Jangir Singh, Satnam Singh son of Gurbachan Singh, Harmit Singh son of Jangir Singh and Mohinder Kaur came out from the vehicle. They pulled the complainant down in the vehicle. She found that Sham Singh, Chhinda Singh, Harjit Singh son of Gurbachan Singh, residents of Bulla Rai Uttar and Karnail Singh son of Sajjan Singh resident of village Chilian were also sitting on the back side of the vehicle. She knew all these accused very well. They sprinkled something on her for making her unconscious and she remained unconscious for about 5-6 hours while the vehicle was running. Thereafter, she came to know that she was detained by them in Ambala City. She asked them to discuss the matter with her parents, but they did not make any mobile call for discussion, rather, threatened and frightened her.

After some days, Sukhdev Singh friend of Satta Singh son of Gurbachan Singh, who was armed with pistol had gone there at Ambala, who also threatened and frightened the complainant with pistol and got some blank papers signed from her. However, they did not disclose anything at the time of getting signatures on blank papers. After detaining for some days there, they took her at village Bhata in the house of Amar Singh and Pala Singh, who are maternal uncles of accused Sukhdev Singh. They had also beaten the

complainant and got her signatures on blank papers by detaining her. They had also taken her photographs. During the whole period, accused Sukhdev Singh son of Jangir Singh was committing rape upon her at various places in the houses of his relatives.

In the aforesaid FIR, the police conducted investigation and the report under Section 173 Cr.PC was presented in the Court. The accused sought to be summoned were kept in Column No.2. Since they were not challaned, the Public Prosecutor moved an application under Section 319 Cr.PC for summoning the co-accused, namely, Satnam Singh son of Gurbachan Singh, Harmeet Singh son of Jangir Singh, Mohinder Kaur wife of Jangir Singh, Sham Singh son of Gurbachan Singh, Chhinda Singh @ Surinder Singh son of Gurbachan Singh and Karnail Singh son of Sajjan Singh, to face trial under Section 376 IPC, along with the other accused. However, vide impugned order dated 27.08.2019, the said application was dismissed by the trial Court.

Learned counsel for the petitioner has argued that there are serious allegations against the accused persons sought to be summoned, which is clear from the statement of the complainant recorded before the trial Court as PW1, but the trial Court has not summoned the accused persons without recording any cogent findings. The impugned order dated 27.08.2019 passed by the trial Court is not judicious one and the trial Court has not considered the *prima facie* case, which is clearly established against the accused persons sought to be summoned by way of an application under Section 319 Cr.P.C.

I have heard learned counsel for the petitioner.

Perusal of the impugned order dated 27.08.2019 passed by learned trial Court shows that the accused sought to be summoned are relatives of main accused Sukhdev Singh. This fact was stated by the petitioner-complainant in her statement under Section 164 Cr.P.C., wherein she has specifically stated that the main accused and the other persons mentioned in the FIR are relatives of the main accused, with whom her in-laws' family has got some old rivalry or inimical relations. Even during investigation, on the application of Gurbachan Singh, an inquiry was conducted into the matter by Jasbir Singh, Deputy Superintendent of Police, Guru Harsahai and all the persons sought to be summoned as co-accused were found innocent. Accordingly, it was found that they had no role in the commission of crime and for this reason, they were kept in Column No.2.

The power provided under Section 319 Cr.PC is required to be used cautiously and sparingly as it is an extraordinary power in the hand of the Court. 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.

Therefore, this Court does not find any illegality in the impugned order dated 27.08.2019 passed by the trial Court and no interference is warranted with the same.

Accordingly, affirming the impugned order dated 27.08.2019 passed by learned Additional Sessions Judge, Ferozepur, present criminal revision, being devoid of any merit, is dismissed.

November 25, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No