

CRR-1663-2019

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

CRR-1663-2019 (O&M)
Date of decision: 25.02.2020

Raj Kumar Kanda @ Raja

.... Petitioner

Versus

State of Punjab & anr.

.... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Mohinder Kumar, Advocate
for the petitioner.

Ms. Bhavna Gupta, DAG, Punjab.

Mr. N.K.Manchanda, Advocate
for respondent No.2.

Manjari Nehru Kaul, J.(Oral)

Instant revision petition has been preferred against the order dated 27.05.2019 passed by Addl. Sessions Judge, Moga vide which an application filed by the prosecution under Section 319 Cr.PC for summoning the petitioner as an additional accused to face trial along with other accused in FIR No.86 dated 23.05.2017 registered under Sections 376, 376-D, 494, 495, 328, 323, 120-B and 420 IPC (Section 3 of SC/ST Act added later on) was allowed.

Learned counsel for the petitioner urged that on a perusal of the FIR in hand there were no allegations levelled against the petitioner. A detailed inquiry and investigation was carried out by the investigating agency wherein the petitioner was found innocent along with two others. It was further urged that the petitioner was a paternal uncle of the complainant's husband and had been residing separately for the last more than 18 years. Hence, there was no

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question of his involvement in the alleged crime. It was further urged that the complainant had made material improvements in her testimony as PW-1, which was at variance with her first statement, which was recorded before the investigating agency and had led to the registration of the FIR in question. It was also urged that at the time of recording of a statement under Section 164 Cr.PC, the complainant was accompanied by her parents and police and it was under their pressure that she had levelled false allegations against the petitioner.

Learned counsel for the respondents, on the other hand, vehemently opposed the submissions made by learned counsel for the petitioner and submitted that the petitioner had at the initial stage itself, at the time of registration of the FIR categorically named and levelled allegations of rape against the petitioner. Hence, there was no question of any false implication much less material improvements being made by the complainant during her evidence before the trial court.

I have heard learned counsel for the parties and gone through the impugned order as well as other material available on record.

Admittedly, the complainant not only while appearing as PW-1 before the trial court reiterated the allegations against the petitioner, which she had levelled at the time of registration of the FIR in hand but she clearly spelt out the role of the petitioner in the crime in question. Her statement recorded under Section 164 Cr.PC before the Court below was also on the same lines. The submission of learned counsel for the petitioner that the petitioner was not residing in the same house as the co-accused would be of no consequence as it is not the case of the petitioner that he and the parents-in-law of the prosecutrix

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had strained relations or were not on visiting terms with each other. In fact, perusal of the testimony of PW-3 Dr. Dimple Singla prima facie corroborates the version as given out by the prosecutrix that she used to be administered intoxicants and multiple injections by the accused including the petitioner and thereafter subjected to physical and sexual abuse. PW-3 Dr. Dimple Singla categorically deposed that when the patient came for her medico-legal examination, she was slightly drowsy. In the given circumstances, there appears to be sufficient evidence on record, which justifies the summoning of the petitioner as an additional accused under Section 319 Cr.PC.

As a sequel to the above, this Court does not find any ground to interfere in the impugned order passed by the Court below, which is well reasoned one. Accordingly, the present petition stands dismissed. However, any observation made hereinabove will not be construed to be an expression on the merits of the case.

25.02.2020
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(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?

Yes/No

Whether reportable?

Yes/No