

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

CRR No.2816 of 2019.

Decided on:- February 11, 2020.

Harpreet Kaur.

.....Petitioner.

Versus

State of Punjab and others

.....Respondents.

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

Present:- Mr. Sandeep Kumar, Advocate
 for the petitioner.

HARI PAL VERMA, J. (Oral)

The petitioner has filed the present criminal revision against the order dated 29.07.2019 passed by learned Additional Sessions Judge, Kapurthala, whereby on an application under Section 319 Cr.PC filed by the prosecution seeking summoning of co-accused Rupinder Kumar Bony, Kulwinder Kaur, Baggi Baba and Raju Mota to face trial along with other accused, learned Additional Sessions Judge had summoned accused Rupinder Kumar Bony to face trial. Whereas the application qua the remaining three persons, namely, Kulwinder Kaur, Baggi Baba and Raju Mota (respondents No.2 to 4 herein) of their summoning, was dismissed.

Briefly stated, an FIR No.64 dated 20.11.2017 under Sections 363, 366-A, 376, 432, 506 and 120-B IPC as well as Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 was registered against accused Gurjit Singh, Harbans Singh, Deepak Verma alias Aasu and Sarabjit Kaur at Police Station Kabirpur, District Kapurthala.

In the aforesaid FIR, the police conducted investigation and the report under Section 173 Cr.PC was presented in the Court. However, the accused sought to be summoned were declared innocent. Since they were not challaned, the prosecution moved an application under Section 319 Cr.PC for summoning the co-accused, namely, Rupinder Kumar Bony, Kulwinder Kaur, Baggi Baba and Raju Mota to face trial along with the other accused. However, vide impugned order dated 29.07.2019, the said application was partly allowed by the trial Court, as only accused Rupinder Kumar Bony was summoned to face trial, but accused Kulwinder Kaur, Baggi Baba and Raju Mota were not summoned in the case.

Learned counsel for the petitioner has argued that the victim in the case has appeared before the trial Court as PW4 on 15.10.2018, wherein she attributed specific role to accused Kulwinder Kaur, Baggi Baba and Raju Mota as well, but learned trial Court has committed grave legal error while not summoning these accused. The prosecutrix has named these accused even in her statement recorded under Section 164 Cr.P.C. He has, therefore, prayed that the respondents No.2 to 4 be summoned to face trial as additional accused in the case.

I have heard learned counsel for the petitioner.

Perusal of the paper book reveals that in paragraph No.11 of the impugned order dated 29.07.2019, learned trial Court has clearly observed that the statement of the prosecutrix under Section 164 Cr.PC (Ex.PW4/A) and her statement on oath had shown that after some days, the accused came and had lighted the fire in the room and sitting around the said fire and on her

asking, accused Gurjit Singh told her that they were performing ceremonies towards their (Gurjit Singh and the victim) marriage. The version of the victim was found very vague. She had not attributed any specific role to any of the three persons i.e. Kulwinder Kaur, Baggi Baba and Raju Mota in the present occurrence. She had not made any allegation against the accused that they performed their i.e. the victim and accused Gurjit Singh's marriage ceremony. Therefore, the trial Court has rightly observed that the single line stated by the victim in her statement on oath, in her statement Ex.PW4-A and statement recorded under Section 164 Cr.PC is not at all sufficient enough for the purpose of summoning of Kulwinder Kaur, Baggi Baba and Raju Mota (respondents No.2 to 4 herein) as additional accused in the case.

Moreover, 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.

In the background of allegations in the FIR, wherein the main allegations are against Gurjit Singh, who allegedly enticed the daughter of the complainant, this Court does not find any illegality in the impugned order dated 29.07.2019 passed by the trial Court and no interference is, therefore, warranted with the same.

Accordingly, affirming the impugned order dated 29.07.2019 passed by learned Additional Sessions Judge, Kapurthala, present criminal revision, being devoid of any merit, is dismissed.

February 11, 2020
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No