

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

CRM-M-33148-2021

Date of Decision: 16.8.2021

Birmati

..... Petitioner

Versus

State of Haryana and others

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Manish Mehta, Advocate, for the petitioner.

Mr. B.S. Virk, Assistant Advocate General, Haryana.

Rajesh Bhardwaj, J. (ORAL)

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

The present petition has been filed under Section 482 Cr.P.C. praying for quashing of the impugned order dated 11.3.2019 passed by the Court of Additional Sessions Judge, Narnaul, wherein he has upheld the order dated 1.12.2018 passed by the JMIC, Narnaul, whereby the application filed by the petitioner under Section 319 Cr.P.C. in case FIR No.16 dated 14.9.2015 under Sections 354 (A)(1), 148, 149, 323 IPC registered at Police Station Women Narnaul, had been dismissed.

As per the factual matrix of this case, the FIR in question was lodged by the petitioner, Birmati on the allegations that the accused after consuming liquor trespassed in her house while she was sleeping and then started molesting her and misbehaved with her. She alleged that accused, namely, Dinesh, Rajbir and Jagdev, Bala Devi and Indu came to her house at 10:00 p.m., who were carrying *axe*, *barcha* and *lathi* in their hands and

thereafter, the injuries were caused. On the basis of the such allegations, the present FIR was lodged to take legal action against the accused. After the investigation, the challan was presented, however, respondents No.2 and 3, namely, Bala Devi and Indu were exonerated by the Investigating Agency.

During the course of recording of evidence, statement of the complainant Birmati was recorded as PW-4, wherein the allegations in the FIR were reiterated and on the basis of that, respondents No.2 and 3 i.e. Bala Devi and Indu were prayed to be summoned under Section 319 Cr.P.C. Learned Judicial Magistrate, Narnaul heard the parties and after perusing the record and appreciating judicial precedents, as applicable in the case came to the conclusion that the application filed under Section 319 Cr.P.C. for summoning do not find any justification and hence, dismissed the same vide his order dated 1.12.2018. Aggrieved by the same, the petitioner filed revision against the same before the learned Additional Sessions Judge, Narnaul. The parties were heard and record was perused. Learned Additional Sessions Judge, Narnaul found that after a thorough investigation, both respondents No.2 and 3 were kept in column No.2 when the final report under Section 173 Cr.P.C. was filed. He appreciated the statement of PW-4 complainant and PW-1 Vikas and did not find any force in the same for summoning the respondents under Section 319 Cr.P.C. It was also found that the earlier litigations were admittedly pending between the parties which further created the doubt on the credibility of both the witnesses i.e. PW-1 and PW-4, on whose deposition the present application under Section 319 Cr.P.C. was filed. The law settled by Hon'ble the Supreme Court in case of Hardeep vs. State of Punjab and others, 2014 (3)

SCC 92 was also found applicable against the plea taken by the petitioner. Resultantly, the revision was dismissed vide order dated 11.3.2019. Aggrieved by both these impugned orders, the petitioner is before this Court.

Learned counsel for the petitioner contends that both the Courts below have failed to appreciate the facts and circumstances on the record and have mis-interpreted the settled law.

Learned State counsel has out rightly submitted that the main case already stands decided, wherein the co-accused, who were facing trial stood already acquitted by the trial Court vide its order dated 26.2.2020.

I have heard learned counsel for the petitioner and for the State.

On the perusal of both the impugned orders and other relevant record, it is apparent that the investigation was carried thoroughly, which was appreciated by an officer of DSP rank and thereafter, the challan was presented and in the challan both respondents No.2 and 3 were kept in column No.2. Thereafter, the complainant Birmati and other witness Vikas were examined as PW-4 and PW-1. On a conjoint reading of their deposition, the application filed under Section 319 Cr.P.C. do not make out any case when it is tested on the law settled by Hon'ble Supreme Court in Hardeep's case (supra) as their Lordships have held that summoning under Section 319 Cr.P.C. is an extra ordinary power and it should be used sparingly and not in a routine manner. It has been further held that satisfaction drawn for summoning of the accused under Section 319 Cr.P.C. should be more than the satisfaction for framing of the charge and less than that of resulting in conviction.

This Court finds that the view taken by both the Courts below do not suffer from any infirmity.

The petition being devoid of any merit fails and hence, dismissed.

(RAJESH BHARDWAJ)
JUDGE

16.8.2021
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Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No