

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

CRR-370-2021 (O&M)
Date of Decision: 15.9.2021

Varsha Petitioner

Versus

Deepak and others Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Pradeep Chhoker, Advocate, for the petitioner.

Mr. B.S. Virk, Deputy 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 petitioner has approached this Court by way of filing the present revision petition impugning the order dated 18.2.2021 passed by the learned Additional Judge, Sonipat, vide which the application under Section 319 Cr.P.C. filed by the petitioner-complainant has been dismissed.

As per the facts of the case, the FIR in question was lodged by the petitioner against the accused, namely, Deepak, Babita, Dharambir, Ramesh, Babli and Sonu on the allegations that accused-Dharambir had administered her liquor on 08.11.2018 and thereafter, committed forcible sexual intercourse against the order of the nature with her. It was further alleged that the accused has been committing rape on the prosecutrix for the last six years and threatened to kill her. The investigation was completed and challan was presented, wherein the present respondents were kept in column No.2. During recording of the evidence when the examination-in-chief of the prosecutrix as

PW-1 was going on, an application under Section 319 Cr.P.C. was moved through Public Prosecutor for summoning the five respondent-accused. It was contended that in the application that the prosecutrix had made specific allegations against all these accused, however, the Investigating Agency illegally exonerated them. Thus, all these five accused be also summoned to face the trial. Learned trial Court after hearing both the parties, came to the conclusion that no case is made out for summoning the accused under Section 319 Cr.P.C. and thus, declined the same by the impugned order dated 18.2.2021. Aggrieved by the same, the petitioner has approached this Court.

Learned counsel for the petitioner has vehemently contended that there are specific allegations by the petitioner in the FIR lodged against all the accused. As the investigation was not conducted properly, hence, they were exonerated during the investigation. He submits that when the prosecutrix entered into the witness box before the trial Court, she reiterated the allegations against the accused as mentioned in the FIR and hence, all these accused were liable to be summoned. He submits that the view taken by the trial Court is totally in contravention to the law laid down by Hon'ble the Apex Court, thus, unsustainable in the eyes of law.

I have learned counsel for the petitioner and perused the record.

Section 319 Cr.P.C. reads as under:-

“319. Power to proceed against other persons appearing to be guilty of offence.

(1)Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under subsection (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re- heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

From the bare reading of the statutory language of Section 319 Cr.P.C., there is no dispute that additional accused can always be summoned by the trial Court provided there is a satisfaction of the trial Court for summoning the same. Hon'ble the Supreme Court in Dharam Pal and others vs. State of Haryana and another, AIR 2013 SC 3018, wherein Hon'ble Apex Court had settled the law that summoning of a person as an additional accused in exercise of discretion under Section 319 Cr.P.C. cannot be made merely because some witnesses have mentioned the name of such person. The discretion under Section 319 Cr.P.C. is an extra ordinary power, which is conferred on the Court and hence, the same should be used sparingly and only if compelling reason exists for taking cognizance against the other person against whom action has not been taken. In the case in hand, the investigation was thoroughly carried out and on conclusion of the same, the allegations against the respondents were not substantiated and hence, they were exonerated after the investigation. It has been observed by the trial Court that

the complainant/prosecutrix has reiterated the names of the accused in a casual manner, which is not sufficient. Hon'ble the Apex Court had laid down that the satisfaction arrived at by the trial Court should be more than the satisfaction which is required for framing of charges and less than the satisfaction for the conviction of the accused. In the overall facts and circumstances and record of the present case, it is found that the case in hand do not qualify on the anvil of the law settled and thus, the view taken by the trial Court suffers from no infirmity. As a result, I find myself in agreement with the view taken by the trial Court and hence, there being no justification in summoning the respondents, the present revision petition being devoid of any merit is dismissed.

(RAJESH BHARDWAJ)
JUDGE

15.9.2021
sharmila

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