

119.

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

**CRM-28123-2021 IN/AND
CRR-556-2021**

Date of Decision: 14.09.2021
(Heard through VC)

ANITA

.... Petitioner

Versus

STATE OF HARYANA AND ANR.

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Ms. Amrita Garg, Advocate,
for the petitioner.

Ms. Mahima Yashpal, DAG, Haryana.

JAISHREE THAKUR.J

CRM-28123-2021

Application is allowed, as prayed for.

Documents i.e. Annexures P-6 and P-7 are taken on record.

CRR-556-2021

Through the present criminal revision petition, the petitioner seeks to challenge the order dated 03.02.2021 passed by the learned Additional Sessions Judge, Fast Track Special Court, Hisar, whereby the application under Section 319 Cr.P.C. seeking to summon Preeti as an additional accused, has been dismissed.

In brief, the facts are that the victim got an FIR No.57 registered on 14.11.2019 at Women Police Station, Hisar, with the allegations that on 25.10.2019, Amit son of Narender and Shubham son of Ishwar called her downstairs by making phone call and when she came out

of her house, they administered her some intoxicant and in that unconscious state, they took her to the fields where she was raped. They also extended threat to kill her family members in case she disclose the matter to anyone. It was stated that her friend Preeti was involved in the crime. On 07.11.2019, Amit son of Narender forcibly entered her house and tried to commit rape upon her, but she was saved due to timely intervention of her aunt, namely, Mukesh. During investigation, a statement of the victim was recorded on 14.11.2019 in the presence of Ms. Rekha Mittal, legal aid counsel. The statement was at variant to the details given in the FIR wherein it was stated that on 25.10.2019, Amit and Shubham by making phone calls, called her on the downstairs and after administering some intoxicant substance, took her to the fields where Shubham committed wrong act with her while Amit was at a distance. Thereafter, they dropped her home. On 07.11.2019, Amit came to her house and started to molest her, on which, she raised noise and her aunt came to her rescue. A similar statement was given on 15.11.2019 under Section 164 Cr.P.C. Thereafter, the matter was investigated and the challan presented. Shubham and Amit were nominated as accused in the challan presented. However, when the statement of the victim was recorded, she stated that she was studying in 10+1 class and Preeti was her classmate and she was having affair with the accused Amit and Shubham and it is Preeti who asked her to develop a friendship with them. Preeti is the one who gave a cell phone to her and it was on that phone, Shubham started to talk with her. In the statement given in court, she further elaborated to the extent that 15 days prior to the incident, the accused Shubham had committed rape upon her and at that time both, Amit and Preeti were

present. On the basis of said statement, an application was filed by the prosecution seeking to have Preeti summoned on the basis of the deposition given and that she would be a necessary party as she had participated in the commission of crime. The said application was contested and the Additional Sessions Judge dismissed the said application finding no merit in it. The said order has been challenged by way of filing the instant criminal revision petition.

Learned counsel appearing on behalf of the petitioner herein would argue that in the FIR and in the deposition given before the court, the involvement of Preeti is clear. It was Preeti, who was initially having an affair with Shubham and Amit and she is the one who gave the phone to the victim with which she would converse with Shubham. It is further argued that said Preeti was present on one of the occasions when the offence was committed by Shubham.

The reading of the impugned order would reflect that the Additional Sessions Judge has taken into account the FIR and the statement of the prosecutrix which was recorded before the police. In the statement under Section 164 Cr.P.C., the main allegations are against Shubham and Amit of committing the offence of rape and of trying to molest her. In both these statements recorded, there is no allegation against Preeti, whereas in the FIR, there is a statement that Preeti is involved. On the reading of the statement, the Additional Sessions Judge dismissed the application holding that the power under Section 319 Cr.P.C. is discretionary and extraordinary power and has to be exercised sparingly and only in those cases where the circumstances of the case so warrant. Finding that the accused was found

innocent during investigation and the challan was presented only against Amit and Shubham, the application seeking to summon Preeti was dismissed.

The power under Section 319 Cr.P.C. is to be exercised only when there is a strong and cogent evidence against a person and not merely on a bald statement. Prima facie there should be a case established from the evidence led before the court that such evidence if goes rebutted would lead to conviction. The law in this regard has been well settled in a judicial pronouncement of the Constitution Bench in *Hardeep Singh Versus State of Punjab and others-(2014) 3 SCC 92*. In the instant case, there is no specific role attributed to the proposed accused who was found innocent during investigation. Her name does not find mention in either of the two statements given under Sections 161 and 164 Cr.P.C. and even in the complaint made, there is no role attributed to her other than stating that the accused is involved. The main allegations have been made against Shubham and Amit, who are already facing trial. Consequently, finding no infirmity in the order, the present petition stands dismissed.

(JAISHREE THAKUR)
JUDGE

14.09.2021
sanjeev

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No