

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

(Heard through VC)

CRR No.1096 of 2021 (O&M)

Date of Decision: September 29, 2021

Poonam Arora

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Baldev Singh, Advocate
for the petitioner.

JAISHREE THAKUR, J. (Oral)

The instant criminal revision has been filed seeking to challenge impugned order dated 01.09.2021 passed by the Additional Sessions Judge, Yamuna Nagar at Jagadhari in case FIR No.60 dated 01.07.2020, registered under Sections 376-D, 384, 506 of Indian Penal Code, whereby application seeking to summon respondent No. 2 to 7 herein as additional accused has been dismissed.

In brief, the facts of the case are that the petitioner herein, who is the complainant moved a compliant on 01.07.2020 that accused Raman, Aman and Sonia were their neighbours till 2014. When the petitioner was aged 17 years, accused Sonia asked her to develop friendship with her brothers Aman and Raman. In June 2007, Sonia called her to her home by saying that she is alone. After some time, her brothers came back. Sonia

offered her cold drink and after consuming it, she became unconscious. Aman and Raman took her in the room and committed rape upon her. When she raised objection, all the three accused persons threatened her. In the year 2012, her parents gave her one mobile phone. Accused Raman got her number and started talking to her. Thereafter, she got married to one Tarun resident of Jathlana, but accused Raman used to call her and blackmailed her to make her photos and videos viral, due to which her relations with Tarun became strained and she got divorce from him and received Rs.14 lacs as alimony. When this fact came to the knowledge of Raman, he while blackmailing her, asked her to hand over the ATM card to him and she did so under threat. Thereafter, the petitioner married to one Puneet, however, later on she came to know that he was of unsound mind. She got divorce from Puneet also. It has been alleged by the petitioner that accused Raman withdrew different amounts from her account and also forcibly took 15 tolas of gold jewellery. In February 2020, she narrated the whole incident to her family, besides the fact that accused has withdrawn Rs.34 lacs from her account as well as from the account of her father and brother. On the basis of said complaint the instant FIR was registered. During investigation, accused Raman was arrested and after following the due procedure the case was committed to the Court of Sessions and charges were framed against him. After conducting the further investigation, Aman, Sonia, Parduman Malik, Anuradha Malik, Bharat Malik and Neeraj (respondents No.2 to 7 herein) were declared innocent. Subsequently, after recording her examination-in-chief and part cross-examination, the petitioner moved an application under Section 319 Cr.P.C. for summoning respondents No.2 to 7

herein as additional accused to face the trial with accused Raman, which application came to be dismissed by the trial court by the impugned order dated 01.09.2021, which led to filing of the instant criminal revision.

Learned counsel appearing on behalf of the petitioner argued that the prosecutrix had specifically named respondents No.2 to 7 herein in her examination-in-chief that they are also involved in the commission of offence with accused Raman. Counsel for the petitioner pointed out that name of Aman and Sonia was given in the FIR and she transferred money in the account of Parduman Malik, Anuradha Malik, Bharat Malik and Neeraj Malik on the asking of accused Raman. It is contended that the investigating agency wrongly exonerated respondents No.2 to 7 herein arbitrarily.

I have heard learned counsel for the petitioner and gone through the pleadings of the case.

The law is now well settled as regards summoning a person as an additional accused under Section 319 Cr.P.C. The power to summon a person as an additional accused is undisputed, but the same has to be exercised sparingly, with caution, and to be exercised in order to ensure that the culprit does not get away. In ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92*** the Constitution bench of the Supreme Court held:

“105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be

guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

*106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. **The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction.** In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if “it appears from the evidence that any person not being the accused has committed any offence” is clear from the words “for which such person could be tried together with the accused”. The words used are not “for which such person could be convicted”. There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused.”(emphasis supplied).*

The Supreme Court in **Brijendra Singh and others vs. State of Rajasthan (supra)** while summing up the ratio as laid down in **Hardeep**

Singh's case (supra) held:

“Power under [Section 319 Cr.P.C.](#) can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some ‘evidence’ against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The ‘evidence’ herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilized for corroboration and to support the evidence recorded by the Court to invoke the power under [Section 319 Cr.P.C.](#) No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under [Section 319 Cr.P.C.](#) and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom chargesheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.”

In the case in hand, a perusal of complaint Ex.P7 shows that

the prosecutrix alleged the incident of rape which pertains to the year 2007. From 2007 till 2020 when the FIR was lodged, she never complained of the matter to any one. Even in her statement recorded under Section 164 Cr.P.C., besides the incident of 2007, no allegations were levelled against them. However, while appearing in the witness box as PW2, she exaggerated the version and claimed that Aman and Sonia along with accused Raman were involved in the threatening and extorting money from her, which fact she did not allege initially. Clearly no fresh evidence or material was brought on record by the prosecutrix against Aman and Sonia. So far as remaining persons namely Parduman Malik, Anuradha Malik, Bharat Malik and Neeraj Malik are concerned, their names were unearthed by the prosecutrix in her examination on oath for the first time by alleging that she deposited amount in their account at the instance of accused Raman. The matter had been thoroughly investigated by the investigating agency and no incriminating material was found against Sonia and Aman and they were accordingly found innocent. So far as remaining persons namely Parduman Malik, Anuradha Malik, Bharat Malik and Neeraj Malik are concerned there is nothing on record to show that they compelled the prosecutrix to deposit any amount in their account, as she herself stated that accused Raman forced her to do so. Similarly, nothing incriminating was found against them also.

There is no infirmity in the order of the Additional Sessions Judge, who noticed that the statement made by the prosecutrix in the court appears to be after thought and concocted one just to implicate respondents No.2 to 7 herein and prima facie there is no material available to summon

them as an additional accused to face the trial.

Therefore in view of the foregoing discussion and ratio of law, the instant criminal revision is hereby dismissed, being devoid of any merits.

September 29, 2021
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No