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

CRR-1107-2021

Date of decision : 30.09.2021

Bakshish Rani

..... Petitioner

versus

State of Punjab and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Parminder Singh Sekhon, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

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

Petitioner has approached this Court impugning the order dated 06.09.2021 passed by the learned Additional Sessions Judge, Bathinda, whereby, the application under Section 319 Cr.P.C. for summoning the respondent No.2 has been dismissed.

Succinctly, facts of the case that the petitioner is the author of the FIR. The present FIR has been lodged on the basis of the allegations that about 4-5 years ago, when she was studying in 11th standard, the neighbour of her old house namely, Devinder Kumar @ Nikka and Munish Kumar son of Ram Parshad used to tease her while going to the school and follow her on the way. Devinder Kumar used to

tell her that she should marry his brother Munish Kumar, who would send her abroad. However, she refused the same. On 23rd March, 2019 when she was going to the institute then Devinder Kumar @ Nikka and Munish Kumar followed her in the white car and made her to sit in car forcibly. Both of them took her to their room and committed rape upon her forcibly turn by turn. The video was also made by them and photographs were clicked and the prosecutrix was threatened. Scared of the same, she did not reveal about the same to anyone. On 24th May, 2019 when she was going towards the institute then both these brothers again made her to forcibly sit in the car and tried to rape her. Regarding this, she lodged an FIR No.69 dated 28.05.2019, under Sections 354, 354-A, 354-B and 506 IPC at Police Station Dayalpura against Munish Kumar. After this, on 11th July, 2019, her parents solemnized her marriage with Sukhpreet Singh. Thereafter, both these accused i.e. Devinder Kumar and Munish Kumar sent the video taken by them earlier to her in-laws, due to which, she was thrown out of the matrimonial home by her in-laws. It was further alleged that on 11th November, 2020, Munish Kumar by making his brother Devinder Kumar sit in the car came to her institute and he forcibly kissed her. When she raised alarm, the institute staff released her from the clutches of Munish Kumar. As a result, both Munish Kumar and Devinder Kumar ran away by giving her death threats. The request was made to take the legal action against both the culprits. After registration of the FIR, investigation commenced. However, the allegations were substantiated against Devinder Kumar and hence, the challan was presented only against Munish Kumar.

After commencement of the trial, the prosecutrix i.e. the petitioner was examined as PW-1, who reiterated her allegations against Devinder Kumar as made in the FIR and on the basis of the same, application under Section 319 Cr.P.C. was filed for summoning the respondent-Devinder Kumar to face trial as an additional accused with co-accused Munish Kumar. Learned trial Court heard both the parties and perused the record and declined the same vide its order dated 6th September, 2021.

Aggrieved by the same, the petitioner is before this Court by way of filing the present revision petition.

Learned counsel for the petitioner has vehemently contended that the view taken by the learned trial Court is totally based on conjectures and surmises. He would submit that respondent No.2 Devinder Kumar was specifically mentioned by the petitioner in the FIR in which categorical allegation of rape against him were made by the petitioner but due to the tainted investigation, he was exonerated by the investigating agency, while presenting the challan. He submits that respondent Devinder Kumar is brother of co-accused Munish Kumaar who accompanied him at the time of the occurrence and both of them, committed rape upon the prosecutrix and hence, the trial Court has illegally declined to accept the application filed under Section 319 Cr.P.C.

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

The perusal of the record would show that both the respondent No.-2 and co-accused Munish Kumar are named in the FIR.

The allegations pertaining to rape are also found to be alleged against both the accused. However, on the investigation, the allegations were substantiated only against Munish Kumar and hence, the respondent Devinder Kumar was exonerated. It is discernible from the facts of the case that the petitioner reiterated the allegations against the respondent levelled in the FIR. She had alleged primarily three incidents committed by the accused. On 23rd March, 2019 when she was going to the Coaching Centre, she was followed by respondent No.2 and his brother Munish Kumar. She was forcibly pushed in the car by them and taken to their house, where both of them committed rape upon her and made her video as well. Thereafter, on 24th March, 2019, when she was going to the institute, again both these accused followed her and she was forcibly made to sit in the car and attempted to be raped. In the cross-examination she had admitted that she got registered FIR No.69 dated 28.05.2019, under Sections 354, 354-A, 354-B, 506 IPC, Police Station Dayalpura. This FIR was registered only against Munish Kumar and there was no whisper regarding respondent No.2. Thereafter, the petitioner alleged the third occurrence dated 11th November, 2020 wherein it was alleged that Munish Kumar came along with respondent No.2 in her institute. Munish Kumar forcibly kissed her whereas, respondent No.2-Devinder Kumar was waiting downstairs in the car. The CCTV footage was appreciated and the allegations of the petitioner were found to be substantiated only against Munish Kumar and not against Devinder Kumar. Respondent No.2 was arrested on 19th November, 2020 and thereafter, released on 22nd December, 2020. The incidents of 23rd March, 2019 and 24th March, 2019 were prior to the registration of the FIR No.69 dated 28.05.2019. It is

pertinent to mention that this FIR No.69 was registered only against Munish Kumar and not against respondent No.2, though, it was very much in the knowledge of the prosecutrix that he also committed rape but not alleged at that time. The Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab and others, 2014(1) RCR (Criminal) 623** is reproduced as under:-

98. Power under Section 319 Cr.P.C. 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.

99. 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 Cr.P.C. In Section 319 Cr.P.C. 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 Cr.P.C. to form any opinion as to the guilt of the accused.

It has been held by the Hon'ble Supreme Court that summoning under Section 319 Cr.P.C. is an extraordinary power which cannot be used in a cavalier manner and the same has to be used sparingly. The satisfaction of the Court for summoning the additional accused under Section 319 Cr.P.C. should be more than the satisfaction

required for framing of the charge. The facts and circumstances of the present case when tested on the anvil of settled law would fail to qualify for accepting the application filed under Section 319 Cr.P.C. During investigation by the investigating agency, the respondent was found to be innocent. The petitioner has admitted during cross-examination that respondent No.2 was not named in FIR No.69 though, the occurrence alleged took place, before registration of the FIR No.69.

In view of the attending circumstances and findings arrived at by the trial Court, this Court does not find any infirmity in the conclusion drawn by the trial Court. The petition being devoid of any merits, is hereby, dismissed.

(**RAJESH BHARDWAJ**)
JUDGE

30.09.2021
m. sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No