

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

CRR-1402-2021

Date of Decision: 10.11.2021

Rahul @ Mohd. Saif

..... Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Ms. Rosi, Advocate, for the petitioner.

Rajesh Bhardwaj, J. (ORAL)

Present revision has been preferred by the petitioner impugning the order dated 1.10.2021 passed by the learned Additional Sessions Judge, Fast Track Court for Trial of Rape Cases, Nuh, wherein application under Section 319 Cr.P.C. for summoning the petitioner-Rahul @ Mohd. Saif has been accepted.

As per the factual matrix of the case, the FIR in question was registered by the complainant Haroon alleging that his cousin sister, i.e. the victim, was taken by the accused Firdosh in her house, where Muaaj Khan committed rape with her, whereas, accused Rahul guarded the gate of the room. It was further alleged that on 25.5.2020, his cousin sister was again raped and accused Firdosh facilitated the accused for committing rape and accused Sabir threatened to kill. The investigation commenced and on the conclusion of the same, petitioner-Rahul @ Mohd. Saif was exonerated by the Investigating Agency at the time of presenting the challan. However, when the victim was examined as PW-2, she stated that the house of the Firdosh was situated in front of her house. Six months earlier of the present occurrence, Firdosh took her in house, where Muaaj Khan and Rahul were

already present. She was pushed in the room by Firdosh and she locked the room from outside. Thereafter, Muaaj Khan and Rahul committed forcible rape with her against her wish and both of them had taken her photographs as well. They threatened her that if the matter is narrated to the family members, then they will viral her photographs. On the basis of the same, the application under Section 319 Cr.P.C. was filed for summoning the petitioner, Rahul to face the trial alongwith the co-accused.

Learned counsel for the petitioner has vehemently contended that a thorough investigation was carried out and on conclusion of the same, no evidence came against the petitioner, hence, he was exonerated. She has submitted that the power under Section 319 Cr.P.C. is extra ordinary power, which should be used sparingly. However, the trial Court failed to appreciate the same and hence, allowed the application filed under Section 319 Cr.P.C. by illegally summoning the petitioner for facing trial. She has relied upon the judgment of Hon'ble the Apex Court in the case of Hardeep Singh vs. State of Punjab and others, (2014) 3 SCC 92.

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

It is evident from the facts on record and the arguments advanced by learned counsel for the petitioner that the name of the petitioner specifically find mentioned in the initial version of the complainant Haroon, on the basis of which the FIR was lodged. It was mentioned in the FIR that the Muaaj Khan committed rape with the victim, whereas, the petitioner guarded the gate of the room. Thereafter, the statement of the victim was recorded under Section 164 Cr.P.C. and the allegations were made by the

victim against the petitioner also. However, during the course of the investigation, the Investigating Agency exonerated the petitioner. After filing of the challan, the Court took the cognizance and the victim was examined as PW-2. On the bare reading of the deposition of the victim before the trial Court, it is evident that there are specific allegations of rape committed by the petitioner on the victim. As per the law settled by Hon'ble the Apex Court in Hardeep Singh' case (supra), power under Section 319 Cr.P.C. should be used sparingly. The Hon'ble Apex Court laid down the parameter that the satisfaction of the Court against the proposed accused for summoning him/her to face the trial should be more than the prima facie case, which should be at the time of framing of charge and the evidence produced, if go un-rebutted should lead to conviction. Weighing the facts of the present case in the light of the law settled, it is found that victim has alleged a specific role against the petitioner since beginning. The only argument raised by learned counsel for the petitioner is that the he was exonerated during investigation. In the overall facts and circumstances, the view taken by the trial Court in the opinion of this Court suffers from no illegality. Thus, the petition being devoid of any merit, is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

10.11.2021
sharmila

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