

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
(through video conferencing)**

CRR-201-2022
Decided on : 11.02.2022

Raj Hans and another

..... Petitioners

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Abhimanyu Singh, Advocate
for the petitioners.

Manjari Nehru Kaul, J.(Oral)

The petitioners are challenging the order dated 07.12.2021 passed by Addl. Sessions Judge, Charkhi Dadri vide which they were ordered to be summoned as an additional accused to face trial pursuant to an application filed under Section 319 Cr.PC in case FIR No.286 dated 22.12.2019 registered under Sections 365, 376(2)(n), 376-D and 506 IPC and Section 3(2)(va) of SC/ST (Prevention of Atrocities) Act, 1989 at Police Station Badhra District Charkhi Dadri.

The prosecution case in a nutshell is that on 22.12.2019 a complaint made to the police by the father of the prosecutrix to the effect that she was missing from the house and all efforts to trace her had been in vain. Resultantly, an FIR was registered under Section 346 IPC. Subsequently, on 07.01.2020, the prosecutrix was recovered from Churu Railway Station, Rajasthan. While getting her statement recorded under Section 164 Cr.PC the prosecutrix narrated the entire sequence of events from the time when she went missing on 22.12.2019 and her subsequent

recovery on 07.01.2020 from Churu. As per the prosecutrix, accused Naveen (since challaned and already facing trial) had been harassing and stalking her for sometime. On 21.12.2019, when she came out of her house to answer the call of nature, accused Naveen came to the spot accompanied by three other boys. While accused Naveen gagged the mouth of the prosecutrix, one of the three boys caught hold of her legs and forced her into a waiting vehicle. Thereafter, accused Naveen along with those boys, who were under the influence of liquor, committed gang rape upon the prosecutrix. The boys alighted from the vehicle and the prosecutrix after being put under threat was then taken by accused Naveen to Chandigarh and told to keep her mouth shut else her brother would be done to death. While in Chandigarh, accused Naveen received a telephonic message from someone that he was a prime suspect behind the disappearance of the prosecutrix, resultantly, the prosecutrix was taken to Mathura by accused Naveen. After leaving the prosecutrix with one boy at Mathura, accused Naveen returned to his place. Though the boy with whom the prosecutrix was left behind, did not do any wrong with her, however, he took her to Pune where she stayed for 3-4 days but on being telephonically instructed by accused Naveen, she was again brought back to Mathura. At Mathura, accused Naveen was already present and he then took the prosecutrix to Delhi where he arranged for her stay in a hotel. In Delhi, prosecutrix was left alone in the hotel by accused Naveen, who then returned to his house. Soon thereafter on return, accused Naveen took the prosecutrix to Ahmedabad and again brought her back to Delhi where he checked her into a hotel before leaving her alone yet again. As she was being viewed with suspicion by the people, the prosecutrix after borrowing a mobile phone

from a lady called up accused Naveen and pleaded with him to leave her back in her house. Accused Naveen then asked the prosecutrix to board the train for Satnali and assured her that after picking her up, he would drop her back in her house. The prosecutrix boarded the train as suggested by accused Naveen and reached Satnali where she was received by him and the petitioners. After picking her up, accused Naveen and the petitioners, on the pretext of taking her to her house, instead took the prosecutrix in their vehicle to an abandoned place where they gang raped her under the influence of liquor. After gang raping the prosecutrix, the accused including the petitioners fled away from the spot after pushing her into the bushes. The prosecutrix, whose clothes were soiled with mud, gathered herself and managed to reach the railway station and boarded a train. At Churu Railway Station, the prosecutrix got down to drink water, however, in the meantime, the train departed leaving her stranded there. She was then accosted by a railway official and two police officials, who asked her for her ticket, which she was unable to produce since she had travelled ticketless. On seeing her dishevelled condition, the officials grew suspicious and took her aside. It was then that the prosecutrix revealed all that had happened with her. Her family was contacted by the police at Churu, who on being informed reached Churu along with the police and brought her back to Charkhi Dadri. In the light of the statement so made by the prosecutrix, under Section 164 Cr.PC, offences under Section 365, 376(2)(n), 376-D and 506 IPC and Section 3(2)(va) of SC/ST (Prevention of Atrocities) Act, 1989 were added in the FIR.

Learned counsel for the petitioners while inviting the attention of this Court to the FIR as well as the statement of the prosecutrix under

Section 164 Cr.PC has vehemently contended that a perusal of the same left no manner of doubt that Naveen was the main accused, who already was facing trial, and still further no role whatsoever had been attributed to the petitioners in the disappearance of the prosecutrix. Learned counsel submits that a highly improbable story had been brought forth by the prosecutrix just to harass and humiliate the petitioners as they were close relatives of accused Naveen. It has been further submitted that while appearing before the Legal Aid Counsellor at Charkhi Dadri on 08.01.2020, the prosecutrix neither named the petitioners nor attributed any role to them in the alleged crime and had only stated that accused Naveen was accompanied by three other unknown boys, who too had committed rape upon her. Learned counsel submits that strangely in her statement recorded later on, on the same day, under Section 164 Cr.PC, the prosecutrix improved upon her statement by naming the petitioners and alleging gang rape against them. Learned counsel submits that in the aforementioned facts and circumstances, the investigating agency had thus, rightly found the petitioners innocent and placed them in Column No.2. Learned counsel has submitted that the trial court had failed to appreciate and take into account the material improvements and the bald allegations levelled by the prosecutrix against the petitioners as there was no material on record to connect them with the crime in question and hence, the trial Court had gravely erred in summoning the petitioners to face trial as an additional accused under Section 319 Cr.PC.

I have heard learned counsel and perused the relevant material.

The submissions made by learned counsel for the petitioners

that the prosecutrix while getting her statement recorded under Section 164

Cr.PC had improved upon her earlier statement made before the Legal Aid Counsellor wherein she had neither named the petitioner nor alleged rape against them lacks substance. The fact remains that the prosecutrix had categorically levelled allegations of rape against accused Naveen and both the petitioners in her statement recorded under Section 164 Cr.PC that after she disembarked from the train at Satnali, she was received by all of them, who then took her to an abandoned place, committed rape upon her and threw her into the bushes. The contention of learned counsel regarding improvements made by the prosecutrix in her statement recorded under Section 164 Cr.PC would be a matter to be appreciated during trial. It needs to be emphasized that a statement made under Section 164 Cr.PC stands at a much higher pedestal than what may have been stated by the prosecutrix before the Legal Aid Counsellor. The statement of the prosecutrix stated to have been made before Legal Aid Counsellor can at best be kept at par with the statement of a witness recorded under Section 161 Cr.PC and can be used for the limited purpose of impeaching the credibility of the prosecutrix during her cross-examination. Still further, the term “Evidence” used in Section 319 Cr.PC contemplates evidence of witnesses given before the Court during trial and thus, the statement made before the Legal Aid Counsellor would not fall within the ambit of the term “Evidence”. Moreover, this Court cannot lose sight of the fact that while stepping into the witness box as PW-1, the prosecutrix reiterated her allegations of gang rape against the accused including the petitioners in consonance with her statement recorded under Section 164 Cr.PC.

Coming to the next submission of the learned counsel that the innocence of the petitioners stood fortified from the fact that they had been

placed under Column No.2 during investigation, is devoid of any merit. Just because the investigating agency found the petitioners to be innocent cannot be a ground to decline their summoning as an additional accused under Section 319 Cr.PC. The Court is to merely derive a prima facie satisfaction from the material collected and evidence led qua the complicity of a person sought to be summoned under Section 319 Cr.PC. Else, it would amount to the powers of a Court under Section 319 Cr.PC being rendered redundant and the very purpose and object of Section 319 Cr.PC, in the circumstances would stand defeated because the prime object behind Section 319 Cr.PC is to ensure that no person, who prima facie appears guilty escapes trial in relation to that crime.

As a sequel to the above, this Court is not inclined to invoke its revisional jurisdiction to set aside the impugned order as prima facie there exists sufficient material to show the complicity of the petitioners in the commission of the offences for which they have now been summoned to face trial as an additional accused under Section 319 Cr.PC.

Accordingly, the present petition stands dismissed. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

11.02.2022
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Whether speaking/reasoned:	Yes
Whether reportable :	Yes