

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

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CRR No.304 of 2022 (O & M)

Date of decision :-25.02.2022.

Jitender and another

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr .R. N. Lohan, Advocate for the petitioner.

Ms. Mahima Yashpal, DAG, Haryana,
for the respondent-State.

SUVIR SEHGAL, J.

CRM-6630-2022

For the reasons given in the application, it is allowed.

Copy of the final reports dated 20.06.2020 and 04.01.2022 are
taken on record as Annexures P-11 and P-12 respectively.

Main Case

Vide instant petition filed under Section 401 of the Code of Criminal Procedure, 1973, (for short - “the Code”), the petitioners, Jitender and Ankit Redhu, have challenged order dated 28.01.2022, whereby they have been summoned under Section 319 of the Code for committing offences punishable under Sections 342, 365, 506 read with Section 34 IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 (for short hereinafter referred to as ‘POCSO Act’).

Facts, in brief, leading to the filing of the present petition are that FIR No.38 dated 24.04.2020 has been registered under Sections 342, 365, 506, 376-DA of IPC and Section 6 of POCSO Act at Women Police

Station Jind, on the statement of a thirteen years old school girl, who is a

student of matric, on the allegation that on 24.04.2020, a field neighbour, Karambir son of Bhale Ram, had suffered a heart attack and her entire family took him to a hospital at Jind in their vehicle. On coming to know that she was alone, three boys, Sahil, Jitender (present petitioner No.1) and Ankit Redhu (present petitioner No.2), gagged and kidnapped her at night from her house and took her to a Government school after scaling its wall. They forced her into a room where Sahil raped her and Jitender and Ankit held her captive by holding her hands and legs. They told her that there were other boys with them and threatened her that in case she revealed the incident to anyone at home, her entire family and maternal uncle will be shot dead. All three of them fled away from the spot after sexually assaulting her. She scaled the wall and came back home and narrated the incident to her family.

Counsel for the petitioners has contended that the petitioners have been falsely framed as there is a rivalry in the village. He urges that the petitioners have been found innocent and polygraphy test was conducted after getting permission from the Magistrate and final report dated 20.06.2020, Annexure P-11, has been submitted against Sahil, who has been charged and is facing trial. It is his argument that once a challan has been filed and charge-sheet has been framed wherein, the accused petitioners have been found to be not involved, they cannot be summoned under Section 319 Cr.P.C. He has placed reliance upon the judgment of the Hon'ble Supreme Court in Michael Machado and another vs. Central Bureau of Investigation and another (2000) 3 SCC 262; Krishnappa vs. State of Karnataka, (2004) 7 SCC 792; Mohd. Shafi vs. Mohd. Rafiq, 2007 (2) RCR (Criminal) 762 and Hardeep Singh vs. State of Punjab, (2014) 3

Advance copy of the petition has been served upon the State and the petition has been opposed by the State counsel, upon instructions from L/ASI Neelam. State counsel has argued that the prosecutrix has supported the allegations levelled in the FIR in her statement recorded under Section 164 Cr.P.C. on 25.04.2020, Annexure P-3, as well as during the narration of the incident before the doctor, who conducted her medical examination, Annexure P-2, on the same day as well as in her examination before the Court on 17.02.2021, Annexure P-5. In particular, State counsel has made a reference to the MLR, Annexure P-2, to submit that the prosecutrix has suffered injuries on her limbs and back of the neck. She submits that after the examination of the prosecutrix and her mother, application for summoning both the accused petitioners has been filed which, after contest, has been rightly accepted by the trial Court vide the impugned order, which deserves to be upheld.

Arguments addressed by counsel for the parties as well as the documents appended with the paper book have been considered.

Hon'ble Supreme Court in **Michael Machado and another vs. Central Bureau of Investigation and another (supra)** has held that the basic requirements for invoking Section 319 of Code is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. **In Krishnappa vs. State of Karnataka (supra) and Mohd. Shafi vs. Mohd. Rafiq (supra)**, it has been held by the Apex Court that the power to summon an accused is an extraordinary power conferred on the court and should be used very sparingly and only if

compelling reasons exist for taking cognizance against the other person against whom action has not been taken. The Court must be satisfied there exists a possibility that the accused so summoned in all likelihood would be convicted. Summing up the case law on the subject, a Constitution Bench of the Supreme Court in **Hardeep Singh vs. State of Punjab(supra)** has held as under:-

“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 unrebutted, 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.”

In **S. Mohammed Ispahani vs. Yogendra Chandak, 2017 16**

SCC 226, Supreme Court has observed that:-

“It needs to be highlighted that when a person is named in the FIR by the complainant, but Police, after investigation, finds no role of that particular person and files the charge-sheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the charge sheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet. Once that stage has gone, the Court is still not powerless by virtue of Section 319 of the Cr.P.C. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused.”

The facts of the case have to be examined in the backdrop of the above legal position. From the evidence of the complainant-prosecutrix, it is amply clear that she has consistently deposed regarding the role of Jitender and Ankit. She has categorically alleged that Jitender and Ankit pinned her by holding her hands and legs while Sahil raped her and upon realizing that a watchman was probably on a round, all the three boys fled from the spot while threatening the complainant-prosecutrix of eliminating her family. The evidence of the prosecutrix has been placed on a much higher pedestal than that of an injured witness by the Supreme Court in **State of Punjab vs. Gurmit Singh and ors** (1996) 2 SCC 384. The testimony of a prosecutrix which is of a sterling quality, does not even require any corroboration and is sufficient to record the conviction of an

accused. Polygraphy tests conducted on the accused are not enough to hold that they are innocent. It has been held by a Division Bench of this Court in **Suman vs. Ram Mehar and others, 2015 (27) RCR (Criminal) 867** that polygraphy test is not a substantive piece of evidence. Therefore, the deposition of the prosecutrix alone is enough to make out a prima facie case to proceed against the accused, Jitender and Ankit.

In view of the above position, this Court is of the view that there is no illegality or perversity in the order passed by the trial Court.

There is no merit in the instant revision petition which is ordered to be dismissed.

It is clarified that any observation made hereinabove shall not be construed to be an expression of opinion on the merits of the case.

25.02.2022
sheetal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No