

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

114

CRR-434-2022 (O & M)

Judgment reserved on:06.04.2022

Date of decision : 18.04.2022

Sukhvir Kaur

...Petitioner

Versus

State of Punjab

...Respondent

CRR-538-2022 (O & M)

Hardeep Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Gursimran Singh Madaan, Advocate for the petitioner
in both the cases.

Mr. A.S. Gill, Sr. DAG, Punjab in both the cases.

SUVIR SEHGAL, J.

By this common order, two petitions, the details of which have been mentioned above, are being disposed of as the petitioners in both the petitions are raising the same grievance regarding their being summoned as additional accused. For the sake of convenience, facts are being extracted from CRR-434-2022 titled as Sukhvir Kaur versus State of Punjab.

Challenge in the instant petition filed under Section 401 of the Code of Criminal Procedure, 1973, (for short “the Code”) is to the order dated 16.11.2021, whereby the petitioner has been summoned under Section 319

of the Code to face trial for offence under Sections 506 and 120-B of IPC, in case FIR No.127 dated 09.07.2020 registered at Police Station Sadar, Patiala, Annexure P-1.

Version of the prosecution is that FIR, Annexure P-1, has been registered under Sections 376, 506, 120-B, IPC and Section 04 of Protection of Children from Sexual Offences Act, 2012 (for short “POCSO Act”), on the statement of a 13 year old school going girl (hereinafter referred to as “the prosecutrix”) on the allegation that on 19/20.02.2020, her elder sister, who was unwell was admitted to a hospital at Patiala. Her mother as well as her brother were beside her sister at the hospital and she was staying home. Her father, Surjit Singh, her paternal aunt, Sukhvir Kaur (petitioner in CRR-434-2022) and uncle, Yadwinder Singh stayed with her at her home. Her uncle, Yadwinder Singh and aunt, Sukhvir Kaur, were sleeping on a double bed and she was in the same room on a single one. At 01.00 am, during the night, her uncle, Yadwinder Singh, came to her bed and lay by her side. He grabbed her, molested her, took off her clothes and when she tried to raise an alarm, he gagged her with his hand. He sexually assaulted her and after few minutes went back to her aunt’s bed to sleep. Next morning, she narrated the incident to her aunt, Sukhvir Kaur, who silenced her and told her not to reveal it to anyone. By afternoon, her father, Surjit Singh, as well as his friend, Hardeep Singh (petitioner in CRR-538-2022) came and on being told of the occurrence, they threatened that they will kill her and her father said that then he will shoot himself with a gun belonging to Hardeep Singh, in case, she confides in anyone. After about 2-3 days, she informed her mother about the ghastly incident, who took her to the police station.

During investigation, Sukhvir Kaur, Surjit Singh and Hardeep Singh have been found to be innocent and final report under Section 173 of the Code dated 08.09.2020, Annexure P-6, has been presented against Yadwinder Singh, who has been charge-sheeted. The complainant has been examined as PW-1 and in her examination-in-chief recorded on 23.07.2021, Annexure P-7, she reiterated the allegations leveled in the FIR. An application, Annexure P-8, has been moved by the prosecution to summon Surjit Singh, Sukhvir Kaur and Hardeep Singh to face trial under Section 506 and 120-B of IPC, which has been allowed vide order impugned herein.

Counsel for the petitioner has argued that there is a marital discord between the parents of the complainant and the petitioner, who is a sister of complainant's father, has been falsely implicated because of the tussle between the couple. By placing reliance upon the representations, Annexures P-2 and P-3, as well as the Investigation Reports, Annexures P-4 and P-5, it has been argued that the trial court has not considered these reports before summoning the petitioner as additional accused. Reliance has been placed upon the judgment of the Hon'ble Supreme Court in **Brijendra Singh and others versus State of Rajasthan 2017 (3) RCR (Criminal) 374**, to contend that power under Section 319 of the Code is to be used sparingly.

On the other hand, learned State counsel, who has been served with an advance copy, has opposed the petition and supported the order passed by the trial court.

I have considered the arguments addressed by counsel for the parties as well as examined the impugned order and material placed before this Court.

Power vested in the Court under Section 319 of the Code is an extra-ordinary one. It cannot be exercised without there being any strong and cogent material before the Court. Relying upon the judgment in **Hardeep Singh versus State of Punjab 2014 (3) SCC 92** and Brijendra's case (supra), Hon'ble Supreme Court in **Manjeet Singh versus State of Haryana 2021 (4) RCR (CrI.) 25**, has summarized the case law and has laid down the parameters for exercise of the power under Section 319 and has held as below:-

“13. The ratio of the aforesaid decisions on the scope and ambit of the powers of the Court under section 319 CrPC, 1973 can be summarized as under:

(i) That while exercising the powers under section 319 CrPC, 1973 and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;

(ii) for the empowerment of the courts to ensure that the criminal administration of justice works properly,

(iii) the law has been properly codified and modified by the legislature under the Cr.P.C. indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;

(iv) to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;

(v) where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerles in calling the said accused to face trial;

(vi) section 319 CrPC, 1973 allows the court to proceed against any person who is not an accused in a case before it;

(vii) the court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency;

(viii) section 319 Cr.P.C., 1973 is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial;

(ix) the power under section 319(1) Cr.P.C., 1973 can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207 / 208 Cr.P.C., committal, etc. which is only a pretrial stage intended to put the process into motion;

(x) the court can exercise the power under section 319 CrPC, 1973 only after the trial proceeds and commences with the recording of the evidence;

(xi) the word "evidence" in section 319 CrPC, 1973 means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents;

(xii) it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under section 319 Cr.P.C., 1973 is to be exercised and not on the basis of material collected during the investigation;

(xiii) if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under section 319 Cr.P.C., 1973 and can proceed against such other person(s);

(xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under section 319 CrPC, 1973 can be exercised;

(xv) that power under section 319 CrPC, 1973 can be exercised even at the stage of completion of examination-in-chief and the court need not has to wait till the said evidence is tested on cross-examination;

(xvi) even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of section 319 Cr.P.C., 1973 and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against

the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses);

(xvii) while exercising the powers under section 319 Cr.P.C., 1973 the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.”

Adverting to the facts of the present case, it is apparent from the evidence of the complainant-prosecutrix that she has categorically deposed about the role of Sukhvir Kaur, Surjit Singh and another accused. She has stated that she had disclosed the incident to Sukhvir Kaur in the morning, however, she told her to keep mum and when her father Surjit Singh came in the afternoon, he threatened that he will eliminate her with a weapon belonging to his friend and then kill himself, in case she revealed the incident to anyone.

The petitioner is closely related to 13 year old prosecutrix, who has been consistent in her stand and has stood by the allegations leveled by her in the FIR. The petitioner is accused of having intimidated the prosecutrix, who has been sexually assaulted by a co-accused so that the incident remains suppressed. Hon'ble Supreme Court in **Phool Singh versus State of Madhya Pradesh** 2021 SCC Online SC 1153 has held that the sole testimony of a prosecutrix, which is of an impeccable quality, without any corroboration, is sufficient to record the conviction of an accused. The testimony of the prosecutrix has been placed on a much higher pedestal than that of an injured witness. This Court is satisfied that there exist sufficient material before the trial court to summon the petitioner as an additional accused and to discard the reports submitted by the Investigating Agency.

The argument of the counsel for the petitioner that there is a matrimonial dispute between the parents of the prosecutrix, does not cut any ice as the divorce petition, Annexure P-9, has been instituted in September, 2020, much after the registration of the FIR. This Court is, therefore, of the view that the case falls within the parameters laid down by the Supreme Court in Manjeet Singh’s case (supra).

Keeping in view the totality of the facts and circumstances and the judicial pronouncements, this Court does not find any illegality or perversity in the order passed by the trial court. As such, both the petitions, lacks merit and are hereby 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 and the trial court shall proceed and conclude the trial uninfluenced by any observation made hereinabove.

18.04.2022
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(SUVIR SEHGAL)
JUDGE

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