

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

120

CRR-487-2022

Date of decision :-31.03.2022.

Jagjit Singh Sandhu

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Karamjit Singh Chahal, Advocate for the petitioner.

Mr. Dhruv Dayal, Senior DAG, Punjab
for the respondents-State.**SUVIR SEHGAL, J.**

Challenge in the instant revision petition filed under Section 401 of the Code of Criminal Procedure, 1973, (for short – “the Code”), is to the order dated 19.01.2022 passed by learned Additional Sessions Judge, Pathankot vide which the petitioner has been summoned as an additional accused to face trial in FIR No.50 dated 06.04.2021 registered for offences under Sections 376, 384, 506 IPC; Sections 6 and 12 of Protection of Children from Sexual Offences Act, 2012 and Section 67 of the Information Technology Act, 2000, Annexure P-1.

Facts, in brief, leading to the filing of the petition are that FIR, Annexure P-1, has been registered on the statement of father of a 16 year old girl on the allegation that Sukhjinder Singh came to his village in January, 2020 to serve in Gurudwara Akalgarh, District Pathankot and stayed at his house for 15-20 days. He had a bad eye on his daughter. On going back, he called his daughter to Gurdaspur in April, 2021 and his wife accompanied her. Sukhjinder Singh made stay arrangement for his wife at a Gurudwara Sahab and took his daughter to Chenia Express Hotel where he raped her, made a video of the incident, started blackmailing his wife and daughter and demanded money.

Compelled by the circumstances, his wife paid Rs.5,00,000/- to him. In January, 2021, Sukhjinder picked his daughter from her school and took her to Bixay Hotel at Dhariwal where he raped her again. Now, Sukhjinder and his companions, Jagjit Singh Sandhu (present petitioner), Satbir and Harry Sandhu are threatening that in case they lodge a complaint with the police, they will be eliminated.

Counsel for the petitioner has contended that the impugned order is not sustainable as the Court has ignored the fact that the petitioner was not found involved of any offence under the POCSO Act. By placing reliance upon the judgments of the Supreme Court in **Labhuji Amratji Thakor and others vs. State of Gujarat and another, (2019) 12 SCC 644** and **Ramesh Chandra Srivastava vs. State of U.P. and another, 2021 SCC Online SC 741**, counsel contends that the Court has erred in summoning the petitioner as an accused and it has failed to record its satisfaction that material on the record could lead to his conviction.

Per Contra, learned State counsel has opposed the petition. By referring to the investigation report, he urges that insofar as the petitioner and co-accused, Satbir and Harry Sandhu are concerned, the Investigating Agency has reported that action against these accused would be taken after verifying the facts. She contends that they were not found innocent during the course of inquiry. Reliance has been placed by her on the evidence lead by the prosecution.

I have considered the arguments addressed by counsel for the parties and perused the paper book, impugned order as well as the material placed on record.

The settled legal position is that power under Section 319 of the Code is discretionary and extra ordinary. It is to be used sparingly only if the

situation so warrants. It has to be exercised when there is strong and cogent material before the Court and not in a casual and cavalier manner. A Constitutional Bench of the Supreme Court in **Hardeep Singh versus State of Punjab, (2014) 3 SCC 92** 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 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.”

This judgment has been followed by the Apex Court in Ramesh Chandra Srivastava’s case (supra). Supreme Court has spelt out that the test which has to be applied, is the one, which is more than that of a prima facie case as exercised at the time of framing of the charge, but short of satisfaction to an extent that the evidence, if it goes unrebutted, would lead to conviction. The material has to be examined in the above background.

It is evident that the complainant-prosecutrix has consistently and categorically deposed regarding the role of the petitioner. She has alleged that the petitioner, who is a companion of the main accused, Sukhjinder, has been threatening her and her family and pressurising them not to go to the police to

report the incidents. Her statement has been corroborated with the evidence of her father-complainant, who has stepped into the witness box and has been examined in chief. Therefore, the deposition of the prosecutrix and the complainant is sufficient to make out a case to proceed against the accused-petitioner, who has not only been specifically named in the FIR but also in the statement of the prosecutrix recorded under Section 164 Cr.P.C as well as in her deposition before the Court.

In Labhuji Amratji Thakor's case (supra), Supreme Court found that there was not even a suggestion of any act done by the summoned accused amounting to an offence under the POCSO Act. In the present case, the allegations against the petitioner are of extending death threats to the prosecutrix and her family, apparently attracting offence under Section 506, IPC.

In view of the above discussion, this Court is of the view that there is no illegality or infirmity in the order passed by the learned Additional Sessions Judge, summoning the petitioner, Jagjit Singh, as an additional accused to face trial.

Finding no merit in the instant petition, it is dismissed with no order as to cost.

It is clarified that nothing said hereinabove shall be construed to be an expression of opinion on the merits of the case.

31.03.2022
sheetal

(SUVIR SEHGAL)
JUDGE

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