

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(110)

CRR-650-2022

Date of Decision: 07.07.2022

Shalinderpal Singh @ Shelly

--Petitioner

Versus

State of Punjab & another

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. A.P.S. Sandhu, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

The present revision petition has been filed impugning the order dated 17.2.2022 passed by learned Addl. Sessions Judge, Amritsar, whereby the petitioner has been summoned as an accused under Section 319 Cr.P.C by the learned Trial Court in case FIR No.157 dated 22.6.2019 registered under sections 498-A, 109 IPC (sections 376-D, 506, 148, 149 IPC were added later on) at Police Station, Jandiala, District Amritsar.

It has been contended by learned counsel for the petitioner that the petitioner has been falsely implicated in the present FIR. He submits that respondent no.2/prosecutrix lodged the FIR on the basis of the allegations that the petitioner and the co-accused Gurpreet Singh in connivance with each other forcibly raped her in September, 2018. It was decided that Gurpreet Singh would perform marriage with the prosecutrix and she would withdraw the complaint filed against them with the police. The matter was compromised and the marriage of the prosecutrix took place with Gurpreet Singh on 28.10.2018. After the marriage the prosecutrix was threatened by Gurpreet Singh that the marriage was performed only to wriggle out of the police case and thus she cannot do anything against him

and his friend Shalinderpal Singh @ Shelly i.e. the present petitioner. Hence the FIR was lodged and the investigation commenced. Petitioner is an employee with the Punjab Police. Counsel submits that during the course of investigation a thorough inquiry was made and the case was investigated by the senior officials and no truth in the allegations was found and hence the petitioner was declared innocent. Counsel submits that the challan was presented only against co-accused Gurpreet Singh. He submits that during the course of trial the prosecutrix reiterated her allegations against the co-accused Gurpreet Singh as made in the FIR and hence the learned Trial Court without taking into consideration the investigation already conducted illegally summoned the petitioner under Section 319 Cr.P.C. He submits that as per the law settled the petitioner could not be summoned under Section 319 Cr.P.C in a mechanical manner as there are no convincing evidences on record against the petitioner. He submits that the impugned order being unsustainable in the eyes of law deserves to be set aside.

I have heard learned counsel for the petitioner at length and have gone through the record carefully.

From the perusal of the record it is evident that the petitioner and the co-accused Gurpreet Singh were duly named by the prosecutrix since beginning. There were specific allegations of rape by both the accused. Thereafter the prosecutrix filed a police complaint against both the accused, however, as per the facts of the case the petitioner being a police personnel helped the co-accused in getting married with the prosecutrix to wriggle out of the complaint filed by the prosecutrix before the police. After getting married with Gurpreet Singh she was threatened

that the marriage was performed with Gurpreet Singh only to save their skin from the penal provisions of the law. Though, the inquiry was carried out by the S.S.P., Investigation, Amritsar Rural, who concluded in his inquiry that involvement of the present petitioner is not proved in the FIR. However, the same is not binding on the court to be accepted as it is. The prosecutrix has consistently named the petitioner for his complicity in the alleged offence while lodging the FIR, then in her statement recorded under Section 164 Cr.P.C and finally when she was examined by the Trial Court as PW-2.

The Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab and others, 2014(1) RCR (Criminal) 623*** has held as under:-

98. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

99. 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."

Keeping in view the facts and circumstances of the present case, the evidence on record before the Trial Court were sufficient enough for summoning the petitioner under Section 319 Cr.P.C.

Thus, weighing the facts and circumstances of the present case on the anvil of law settled, this Court does not find any infirmity in the view taken by the learned Trial Court in summoning the petitioner as additional accused under Section 319 Cr.P.C. Hence, the petition being devoid of any merits, is hereby, dismissed.

(RAJESH BHARDWAJ)
JUDGE

07.07.2022

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No