

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

CRM-M-33503-2016

Date of decision : 29.07.2022

Balwinder Kaur

.....Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Naresh Jain, Advocate
for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana.

Mr. M.S. Batth, Advocate
for respondents No.2 to 4.

RAJESH BHARDWAJ, J. (Oral)

Petitioner has approached this Court impugning the order dated 22.04.2016 passed by the learned Additional Sessions Judge, Sirsa whereby the order dated 02.05.2015 passed by Sub Divisional Judicial Magistrate, Dabwali, District Sirsa, Haryana dismissing the application filed by the petitioner-complainant under Section 319 Cr.P.C. for summoning respondents No.2 to 4 to face the trial along with the co-accused was upheld.

As per facts of the case, the present FIR was lodged by the petitioner-complainant wherein it was alleged that on 07.05.2014 at about 04:30 PM, the accused gave beating to the complainant and outraged her modesty. Thereafter, the supplementary statement of the complainant was also recorded on 09.05.2014. After a thorough investigation, the challan was presented only against accused Satpal Singh whereas, all the three accused i.e. respondents No.2 to 4 were kept in Column No.2. During the course of trial, petitioner-complainant appeared as PW-1 and recorded her

statement on the basis of which the application under Section 319 Cr.P.C. for summoning respondents No.2 to 4 was filed. Learned Sub Divisional Judicial Magistrate, Dabwali after hearing counsel for the parties, declined the same vide impugned order dated 02.05.2015. Aggrieved by the same, petitioner filed the revision petition before the learned Additional Sessions Judge, Sirsa. After hearing counsel for the parties, learned Additional Sessions Judge also declined the same vide his impugned order dated 22.04.2016. Aggrieved by both the orders, petitioner/complainant has approached this Court by way of present petition.

Learned counsel for the petitioner has contended that both the Courts below have fallen in error in declining the application filed by the petitioner under Section 319 Cr.P.C. He submits that the petitioner throughout specifically named all the three accused and thus, their complicity was specifically made out. However, as the investigating agency failed to carry out a fair investigation, they were illegally kept in Column No.2 in the charge-sheet filed. He submits that the petitioner reiterated her allegations made in the FIR while appearing as PW-1 and thus, there was ample evidence for summoning respondents No.2 to 4. However, both the Courts below failed in appreciating the ample evidence on record and illegally declined the application. He submits that there was a dispute for the adjoining boundaries between petitioner and the respondents and on account of the same, there was a motive with the respondents to beat her and humiliate her.

Learned counsel for the petitioner relied upon the judgment of Hon'ble Supreme Court in case titled as Hardeep Singh Vs. State of

Punjab and another, 2014(1) RCR (Criminal) 623. He submits that as per the law settled by the Hon'ble Supreme Court, there was ample evidence on record for drawing the satisfaction more than the *prima facie* satisfaction against the respondents but both the Courts below have failed to appreciate the law settled by the Hon'ble Supreme Court and thus, drawn a wrong conclusion in declining the application filed by the petitioner and thus, both the orders deserve to be quashed.

Learned counsel for respondents No.2 to 4 has opposed the submissions made by counsel for the petitioner. He submits that the petitioner is the author of the FIR and she has falsely and frivolously lodged the FIR to settle the boundary wall dispute between the petitioner and the accused. He submits that the FIR was lodged by the petitioner with a malicious intention. He submits that the petitioner after recording the FIR made the supplementary statement with improvements and thereafter, she at the time of appearing before the learned trial Court, further made improvements in her statement and thus, both the Courts below were right in declining the petition filed by the petitioner. He further submits that a thorough investigation was carried out by the investigating agency and all the three accused i.e. respondents No.2 to 4 were found innocent and kept in Column No.2. He submits that the innocence of the respondents is further strengthened from the fact that the challan was presented only against accused Satpal Singh, who after a lengthy trial, was finally acquitted by the learned trial Court vide its order dated 9th March, 2018. He has submitted that once the accused against whom the investigating agencies filed the challan already stands acquitted, the summoning of the respondents under Section 319 Cr.P.C.

has rightly been rejected by both the Courts below.

Learned State counsel has also submitted that after investigation, respondents No.2 to 4 were kept in Column No.2 and the challan was presented only against Satpal Singh. He submits that the accused Satpal Singh is acquitted vide order dated 9th March, 2018.

I have heard counsel for the parties and perused the records.

There is no gainsaying that the petitioner is the author of the FIR and she lodged the FIR on the basis of the allegations regarding the alleged scuffle took place between the complainant and the accused on 07.05.2014 at about 04:30 PM. The alleged occurrence took place as accused Gurlal Singh and Khushal Singh were allegedly damaging the boundary of their field. After a thorough investigation, respondents No.2 to 4 were declared innocent and were kept in Column No.2 whereas, the challan was filed only against the co-accused Satpal Singh. The petitioner-complainant appeared as PW-1 before the trial Court and deposed again against the accused and on the basis of the same, application under Section 319 Cr.P.C was filed. The trial Court declined the same vide order dated 02.05.2015 and the revision filed against the same was also dismissed by the learned Additional Sessions Judge vide order dated 22.04.2016. A perusal of the record would show that the petitioner-complainant gave statement before the police which is Ex.PW1/A and thereafter, the supplementary statement was given on 09.05.2014. Perusal of both the statements would show that there are improvements made by the petitioner in both the statements. It was stated that Gurlal Singh and Satpal Singh torn of her shirt, however, there was no specific injury attributed to these accused. The statement made by the

petitioner before the trial Court is again with many improvements. It was stated that Gurlal Singh and Satpal Singh had torn of her shirt but she did not name the respondent Khushal Singh and Balkaran Singh as it was mentioned in the supplementary statement. There were further contradictions in the statement made under Section 164 Cr.P.C. The matter was thoroughly investigated and on the basis of same, all the three respondents i.e. respondents No.2 to 4 were found innocent. Learned counsel for the petitioner has relied upon the judicial precedent of Hon'ble Supreme Court in *Hardeep Singh's case (supra)* which is reproduced 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 un 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.

The law settled by the Hon'ble Supreme Court as mentioned above does not strengthen the case of the petitioner. However, the same justifies the view taken by both the Courts below. Perusal of the record of the case wherein the complainant has improved her statements, justifies the view taken by the investigating agencies in keeping the respondents No.2 to 4 in Column No.2. As per the law laid down by the Hon'ble Supreme Court, the satisfaction to be drawn by the Court in summoning the respondents No.2 to 4 as co-accused should be more than the satisfaction required at the time of framing of the charge. Besides this, the power under Section 319 Cr.P.C. is discretionary and extraordinary in nature which cannot be invoked in a cavalier manner. Not only this, the only accused who was challaned by the police namely Satpal Singh has been acquitted by the trial Court after the trial.

There is a concurrent finding of both the Courts below and thus, keeping in view the facts and circumstances of the case on the anvil of the law settled, this Court is of the opinion that the case in hand do not qualify for invoking the powers by this Court under Section 319 Cr.P.C. in favour of the petitioner. There is no infirmity in the impugned order passed by both the Courts below. Resultantly, the petition being devoid of any merits is hereby dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

(**RAJESH BHARDWAJ**)
JUDGE

29.07.2022
m. sharma

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No