

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

**CRR-1104-2022 (O&M)
Date of decision : 24.05.2022**

Kirandeep Kaur

.....Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Jaitej Pratap Mittal, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

Petitioner has approached this Court impugning the order dated 10.01.2022 whereby, the learned trial Court has dismissed the application filed by the prosecution under Section 319 Cr.P.C. for summoning of respondents No.2 to 4.

Learned counsel for the petitioner has submitted that the learned trial Court has fallen in error in declining the application filed under Section 319 Cr.P.C. for summoning of respondents No.2 to 4. He submits that at the time of lodging of the FIR, the prosecutrix had specifically mentioned the name of the accused/respondents No.2 to 4 that they connived with the main accused and thus, facilitated the rape committed upon the prosecutrix by the co-accused Ramandeep Singh. He further submits that the prosecutrix has also supported the case of the prosecution at the time when her statement under Section 164 Cr.P.C. was recorded. He submits that however, the investigating agency for the reasons best known to it, exonerated the respondents from the offence committed by them and thus, filed the challan only *qua* co-accused Ramandeep Singh. He submits that at the time of recording of the

evidence, the prosecutrix was examined as PW-1 and she reiterated the allegations against the respondents and thus, the complicity of the respondents No.2 to 4 is established beyond reasonable doubt but the trial Court has failed to appreciate the same. He has submitted that in view of the settled law, the trial Court had ample power under Section 319 Cr.P.C. for summoning the accused to face the trial along with the co-accused.

I have heard counsel for the petitioner and perused the record.

Evidently, the prosecutrix is minor and the respondents were the main accused in the FIR No.102 dated 23.06.2020, under Sections 363, 376(2)N, 376(3), 506 of IPC and Section 6 of POCSO Act, 2012, registered at Police Station Anaj Mandi, Patiala. Though, respondents No.2 to 4 were accused in the FIR, however, after the investigation, they were found innocent and thus, kept in column No.2. As per the facts of the case, both the respondents namely, Harbhajan Kaur and Surjit Singh @ Kukku were present in the house when co-accused Ramandeep Singh threatened the victim and took her to his house on March 17, 2020 then on May 20, 2020 and on June 20, 2020 i.e. on three occasions, she was repeatedly being taken by force by the co-accused Ramandeep Singh. Respondent No.2 who is the mother of Ramandeep Singh allegedly gave intoxicating substance in the milk to the prosecutrix and thereafter she became unconscious and then, she was sexually exploited by Ramandeep Singh. Perusal of the statement under Section 164 Cr.P.C. would show that there was no whisper regarding giving any intoxicating substance in the milk by respondent No.2-Harbhajan Kaur. However, while deposing

before the trial Court as PW-1, the prosecutrix again made improvements by deposing about having been administered the intoxicating material in the milk by him. Besides this, the role assigned to the other accused was their presence at the time of occurrence. There are material improvements in her statement at every stage. The controversy involved in the present case is regarding summoning of respondents No.2 to 4 under Section 319 Cr.P.C. and hence, the appreciation of Section 319 Cr.P.C. becomes essential. The statutory provisions of Section 319 Cr.P.C. reads as under:-

“319. Power to proceed against other persons appearing to be guilty of offence-

- (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.
- (2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.
- (3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.
- (4) Where the Court proceeds against any person under sub-section (1), then-
 - (a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;
 - (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

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.

It is settled proposition of the law that though, the Courts have ample power to summon any person to face trial along with the co-accused if there appears to be any evidence against him, however, the power being an extraordinary in nature, cannot be used in a cavalier manner and the same has to be used sparingly and with great circumspection. The petitioner, who is the author of the FIR, has sought to summon the respondents No.2 to 4 to face the trial along with the co-accused. Respondents No.2 and 3 are admittedly the parents of co-accused Ramandeep Singh. The satisfaction of the Court to be drawn

at the time of summoning in view of Hardeep Singh's case (supra) should be more than what it should be at the time of framing of the charge. The prosecutrix has alleged that respondents were present at the time of occurrence, however, the same is not sufficient enough for persuading the Court for using its extraordinary power under Section 319 Cr.P.C. summoning respondents No.2 to 4.

The facts and circumstances of the case fails to qualify on the anvil of the settled law by the Hon'ble Supreme Court and thus, 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

24.05.2022
m. sharma

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