

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

116

CRR-1239-2022

Date of decision :-06.06.2022

Nanda alias Nand Kumar

...Petitioner

Versus

State of Punjab and another

...Respondents

CRR-1240-2022

Mamta alias Mamta Devi

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Arun Takhi, Advocate for the petitioner(s).

Mr. A. S. Gill, Senior Deputy AG, Punjab,
for the respondent-State.

SUVIR SEHGAL, J.

This order shall dispose of both the petitions mentioned above as the petitioners in the said matters are challenging the same order whereby they have been summoned as additional accused to face trial in FIR No.49 dated 24.07.2020 lodged for offence under Section 376 IPC read with Section 4 of Protection of Children from Sexual Offences Act, 2012 (for short - “the POCSO Act”) at Police Station Hajipur, District Hoshiarpur, Annexure P-2.

For the sake of convenience, facts are being taken from CRR-1239-2022 titled as “Nanda alias Nand Kumar versus State of Punjab and another”.

Vide the instant petition filed under Section 401 of the Code of Criminal Procedure, 1973 (for short – “the Code”), petitioner has challenged

order dated 10.02.2022, Annexure P-1 whereby he has been summoned under Section 319 of the Code to face trial in FIR, Annexure P-2.

As per the case of the prosecution, FIR, Annexure P-2, has been registered on the statement of a 17 year old school going girl (hereinafter referred to as “the prosecutrix”) on the allegation that her date of birth is 3rd May, 2003 and about two months back, she had met Sanjeev Kumar and starting having an affair with him. On 06.06.2020, he took her to Bathinda on his motorcycle on the pretext of getting married to her, where they stayed in a room till 14.06.2020. During their stay, Sanjeev Kumar sexually assaulted her. On the night of 14/15.06.2020, they stayed in village Aglor and on 15.06.2020, they were produced before the authorities. She has alleged that she was coerced to stay away from her parents and was pressurized by Sanjeev Kumar as well as his sister and a cousin to make a statement in their favour otherwise she was threatened that she and her family will be harmed.

During the course of investigation, Nanda alias Nand Kumar (petitioner in CRR-1239-2022), cousin of Sanjeev Kumar as well as Mamta alias Mamta Rani (petitioner in CRR-1240-2022), sister of Sanjeev Kumar, were found to be innocent and final report under Section 173 of the Code has been presented against Sanjeev Kumar, who has been charge-sheeted and is facing trial. The prosecutrix has been examined as PW-1 and in her examination-in-chief recorded on 19.02.2021, Annexure P-4, she has named both Nanda alias Nand Kumar as well as Mamta alias Mamta Rani, the summoned accused. An application under Section 319 of the Code has been moved to summon them as additional accused, which has been allowed vide order impugned herein.

Counsel for the petitioner has challenged the impugned order on the ground that the petitioners, who are closely related to Sanjeev Kumar, have

been deliberately named as the parents of the Sanjeev Kumar refused to accept the prosecutrix and take her home. It has been contended that there are inconsistencies in the statement of the prosecutrix. Reliance has been placed by him upon the judgment of the Supreme Court in **Hardeep Singh versus State of Punjab, (2014) 3 SCC 92** and **Labhuji Amratji Thakor versus State of Gujarat, 2019 (1) RCR (Criminal)1** to contend that the summoning order is not to be passed in routine.

Advanced copy of the petition has been served upon the State. Upon instructions, State counsel has opposed the petition and has referred to the allegations in the FIR as well as in the statement of the prosecutrix recorded under Section 164 of the Code as also during her examination on oath. Attention of the Court has been invited to the history of the incident recorded in the MLR, wherein reference has been made to both the summoned accused.

I have heard learned counsel for the parties and examined the documents placed on the record with their able assistance.

Section 319 of the Code confers an extra ordinary power on the Court, which can be exercised at any stage before final conclusion of trial. Following the judgment in Hardeep Singh's case (Supra), Supreme Court in **Manjeet Singh versus State of Haryana, 2021 (4) RCR (Criminal) 25** has summarized the case law and has laid down the guidelines for the exercise of the power, which are reproduced hereunder:-

“ (i) That while exercising the powers under section 319 Cr.P.C., 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 powerless in calling the said accused to face trial;

(vi) section 319 Cr.P.C., 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 Cr.P.C., 1973 only after the trial proceeds and commences with the recording of the evidence,

(xi) the word "evidence" in section 319 Cr.P.C., 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 Cr.P.C., 1973 can be exercised;

(xv) that power under section 319 Cr.P.C., 1973 can be exercised even at the stage of completion of examination-in-chief and the court need not 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.”

Turning to the case in hand, although final report presented under Section 173 of the Code has not been placed on the record by the petitioner, but it has been referred to during the course of arguments. An examination thereof shows that the investigating agency has given a clean chit to both the summoned accused, Nanda and Mamta with a bald finding that they have been found to be innocent. There is no reference to any material by the investigating officer to come to this conclusion. On the other hand, the prosecutrix has specifically named both the summoned accused in the FIR, Annexure P-2, her statement under Section 164 of the Code, Annexure P-3, as well as in her examination-in-chief, Annexure P-4. She has categorically stated that both the summoned accused were aware of the entire development and allurement given to her by the main accused, Sanjeev Kumar. It has been stated by the prosecutrix that she was kept at a relative's house at Aglor on the night intervening 14/15.06.2020 and both the summoned accused intimidated her into making a statement in their favour. A specific role has been ascribed to both the summoned accused by the minor prosecutrix. From the above, it is evident that there is strong and cogent material before the Court to *prima facie* form the opinion that the summoned accused deserve to be tried with the main accused, who is facing trial. This Court, therefore, is of the view that the case falls within the parameters laid down by the Supreme Court in Manjeet Singh's case (*supra*).

Coming to the judgment in Labhuji Amratji Thakor’s case (supra), Apex Court came to the conclusion that there was not even a suggestion of any act done by the summoned accused attracting the offence complained of. However, in the present case, there are categoric allegations against the summoned accused of being aware of the allurements, sexual assault and of threatening the prosecutrix.

As a sequel to the above discussion, this Court is of the view that there is no illegality or perversity in the impugned order passed by the learned Additional Sessions Judge, Hoshiarpur.

Petitions being bereft of any merit, 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.

06.06.2022
sheetal

(SUVIR SEHGAL)
JUDGE

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