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IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRR-1143-2017

Date of Decision: April 19, 2022

Bunty

.....Petitioner

Versus

State of Punjab and others

.....Respondents

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

Present: Mr.Bhavyadeep Walia, Advocate  
for the petitioner.

Ms.Sakshi Bakshi, AAG, Punjab.

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**RAJESH BHARDWAJ, J.(Oral)**

This revision petition has been filed impugning the order dated 08.02.2017 passed by learned Additional Sessions Judge, Patiala, whereby the petitioner alongwith three other persons has been summoned by the trial Court under Section 319 Cr.P.C. to face trial alongwith the co-accused, who was already facing the trial.

Succinctly, the facts of the case are that Kirpal Singh son of Darshan Singh, i.e. father of the victim, lodged an FIR in question. It was alleged that he is a rickshaw puller and has three children, i.e. two sons and one daughter. His daughter, i.e., the victim, was 17 years of age studying in 10+2. On 27.09.2016, he got a phone call from his son that the victim had left the home at 6.00 a.m. and had not returned home. They made all the efforts to trace her, but could not succeed. Later on it was revealed that his daughter had been enticed away by a boy, namely, Jaideep, who was living in his neighbourhood. The FIR was lodged with the request to take the legal

action against the culprits. On the commencement of the investigation, it was found that the date of birth of the victim was 30.06.1999. On 02.10.2016, both, the victim and the boy Jaideep, were apprehended by the police. The statement of the prosecutrix was recorded under Sections 161 Cr.P.C. and 164 Cr.P.C.. On conclusion of the investigation, the challan was presented against the co-accused, however, the petitioner having found innocent, was kept in column No.2 by the Investigating Agency. On the commencement of the trial, the victim was examined by the trial Court as PW1. She reiterated her allegations as made by her while recording her statement under Sections 161 and 164 Cr.P.C. It was deposed by her that on 27.09.2016 at about 5.30. a.m. she proceeded towards the Gurdwara Sahib and reached at the end of the street. Jaideep Singh, Lakhwinder Kaur, Bunty and Makhan Singh, all residents of her village, were found standing there. Jaideep Singh was sitting on the motor-cycle, which was already on. As she reached near them, Lakhwinder Kaur instigated them to kidnap her. Thereafter Bunty caught hold of her and Lakhwinder Kaur gaged her mouth and at the same time, Makhan Singh put the knife on her ribs and Bunty, Jaideep Singh and Makhan Singh forcibly made her to sit on the motor-cycle, which was driven by Jaideep Singh. Thereafter, the prosecution filed an application under Section 319 Cr.P.C., which was allowed by the trial Court by summoning the petitioner alongwith three other persons.

Counsel for the petitioner has vehemently contended that the view taken by the learned trial Court in summoning the accused is totally unsustainable in the eyes of law. He has submitted that there are contradictions in the statements of the prosecutrix recorded under Sections

statement on all the occasions. On her recovery, she was asked by the police for conducting her medical examination, however, she refused to undergo the medical examination. There are no allegations of rape made by the complainant or the victim in their respective statements. It is submitted that at no stage the prosecutrix and the complainant have levelled any allegation of rape against the petitioner, however, the allegations are regarding forcibly making her to sit on the motorcycle. It is submitted that the story is highly improbable as the victim had every opportunity to raise hue and cry in case any coercion was exerted by the petitioner. He further submits that during her examination by the trial Court as PW1, she had made material improvements in her statement from her earlier statements recorded before the police and the Magistrate. He has relied upon judicial precedent settled by Hon'ble Apex Court in Hardeep Singh vs State of Punjab 2014(3) SCC 92, and has submitted that summoning of the petitioner under Section 319 Cr.P.C. is totally unsustainable in the eyes of law.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner. She has submitted that the trial qua the co-accused has already been concluded and they have been convicted by the trial Court vide its order dated 20.04.2018. She has further submitted that the victim is a minor and she has specifically named the petitioner and hence, he has been rightly summoned by the trial Court under Section 319 Cr.P.C.

Heard.

Evidently, the victim was less than 17 years of age at the time of occurrence. The allegations of abducting her forcibly and thereafter getting her married with Jaideep are there from the very beginning. Her

statements have been recorded during investigation under Section 161 Cr.P.C. and thereafter under Section 164 Cr.P.C. wherein the petitioner had been specifically named and attributed the specific role by the victim. Even during her examination before the trial Court as PW1, the allegations made by the victim earlier have been reiterated. In view of the law settled by Hon'ble Apex Court in Hardeep Singh's case (supra), the power under Section 319 Cr.P.C. cannot be used mechanically and the same has to be used with circumspection. The case in hand pertains to a minor, where the presumption under Sections 29 and 30 of the POCSO Act are duly attracted. The victim has named the petitioner from the very beginning. Even if there are improvements in the statements made by the victim, as contended by the counsel for the petitioner, the same would be evaluated after conclusion of trial, however, at the stage of summoning the accused under Section 319 Cr.P.C. from the attending facts and circumstances and the material on record, the satisfaction of the Court should be more than as required at the time of framing of charge.

Weighing the facts and circumstances of the present case on the anvil of parameters laid down by the Hon'ble Apex Court in Hardeep Singh's case (supra), this Court finds that the learned trial Court has rightly summoned the petitioner to face the trial alongwith the co-accused.

Hence, the present revision petition is dismissed.

April 19, 2022  
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( RAJESH BHARDWAJ )  
JUDGE

1. Whether speaking/reasoned ?
2. Whether reportable ?

Yes/No  
Yes/No