

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

(118)

CRR-1572-2022 (O&M)

DATE OF DECISION:- 15.09.2022

PARMINDER SINGH ALIAS BHINDA ...PETITIONER

VERSUS

STATE OF PUNJAB AND ANOTHER ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Pushp Jain, Advocate
 for the petitioner.

Mr. P.S.Grewal, DAG, Punjab
for the respondent No.1-State.

SUVIR SEHGAL, J. (ORAL)

CRM-27087-2022

Application is allowed as prayed for.

Main case

Instant revision petition has been filed under Section 401 of the Code of Criminal Procedure, 1973 (for short “the Code”) seeking setting aside of order dated 12.05.2022, whereby application under Section 319 of the Code has been allowed and petitioner has been summoned as an additional accused to stand trial along with the main accused in FIR No.158 dated 01.09.2021 lodged for offences under Sections 376, 511, 506, 354, 354-A and 354-B of the Indian Penal Code, 1860 and Sections 8 and 18 of Protection of Children from Sexual

Offences Act, 2012 (for short ‘the POCSO Act”) at Police Station Shahkot, Jalandhar Rural, Annexure P-1.

In brief, facts leading to the filing of the instant petition are that FIR, Annexure P-1, has been registered on the statement of a 15 year old school going girl (hereinafter to as “the prosecutrix”) on the allegation that on 14.08.2021 at about 10 A.M., when her father and brother had left for work, Joga Singh son of Kala Fauji along with Parminder Singh alias Bhinda son of Rana, present petitioner, came to her home, informed her that her hen was loose and she should get her back as a cat could attack the hen. When she stepped out of the house, Joga Singh caught her, took her to a fodder room, threw her on a cot, gagged her and tried to rape her. She raised an alarm, which attracted her sister and on spotting her, Joga Singh quickly left by sitting pillion on the motorcycle being driven by Parminder Singh alias Bhinda, present petitioner. While leaving, Joga Singh threatened that he will eliminate her in case she disclosed the incident to her family members. Due to fear, for a few days she did not reveal the incident to her parents, who on being informed lodged the FIR, Annexure P-1.

The statement of the prosecutrix was recorded under Section 164 of the Code, wherein she reiterated the incident. The matter was investigated and it was found that Parminder Singh alias Bhinda was not present with Joga Singh and that his name was mentioned due to some grudge. Final report, Annexure P-3, was submitted under Section 173 of the Code against Joga Singh. Examination-in-chief of the prosecutrix was conducted on 27.04.2022, Annexure P-4, wherein she reiterated the incident and an application was moved by the prosecution for

summoning the present petitioner as an additional accused, which after contest, has been allowed by the Trial Court by the impugned order.

While placing reliance upon the complaint, Annexure P-5, instituted by father of the main accused, Joga Singh, counsel for the petitioner has urged that there is a rivalry between the parties and the petitioner has been falsely embroiled in the case. He submits that after investigation, the petitioner has been found to be innocent and the Court has erred in brushing aside the final report submitted by the Investigating Agency.

Advance copy of the petition has been served upon the State.

Upon instructions received from ASI, Harbans, State counsel has opposed the petition and has referred to the allegations leveled in the FIR as well as to the statement of the prosecutrix recorded under Section 164 of the Code and during her examination under oath. State counsel submits that the prosecutrix has supported the allegations.

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

It is a settled legal position that power to summon an additional accused conferred on the Courts under Section 319 of the Code is an extraordinary power, which is to be used very sparingly and only if compelling reasons exists. The Court must be satisfied from the evidence collected during trial or in the enquiry that the person sought to be summoned has committed an offence for which he can be tried along with the accused who has already been arraigned. Case law on the subject has been summed up by the Supreme Court in **Manjeet Singh Versus State of Haryana and others, 2021 SCC Online 632** and it has been held

that while exercising power under Section 319 of the Code, the entire effort is not to allow the real perpetrator of an offence to get away unpunished. The effort of the Court should not only be to ultimately find out the truth so that an innocent does not get punished, but also that the guilty are brought to book under the law. It has been further held that it would be inappropriate to deny the existence of power to summon an additional accused with the Courts in the 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.

Adverting to the facts of the present case, it is evident that the prosecutrix has ascribed a specific role to the petitioner, who was not only accompanying the main accused Joga Singh, but also aided him in fleeing away from the spot. The version of the prosecutrix has been consistent in her statement recorded before the Magistrate as well as during her examination-in-chief. The mere fact that she has not named the petitioner in statement under Section 164 of the Code, though she has stood by the version of the incident, does not give any benefit to the petitioner.

The complaint, Annexure P-5, upon which reliance has been placed by the counsel for the petitioner shows that it pertains to an altercation, which allegedly took place on the same day, i.e, 14.08.2021, but despite that the complaint has been lodged on 12.10.2021, much after the registration of the FIR, Annexure P-1. Still further, in the complaint it has been mentioned that an application regarding the incident was moved to S.H.O., Shahkot on 04.09.2021, which was also done after the registration of the FIR. The complaint being an afterthought to cover up

the incident cannot be ruled out. However, this would remain a subject matter to be gone into by the Trial Court during the course of the Trial and this Court does not deem it fit to delve into it any further.

Keeping in view the totality of the facts and circumstances, and the judgment of the Supreme Court, this Court is of the opinion that there is no illegality or perversity in the order passed by the Trial Court. As such, petition being devoid of merit, is ordered to be dismissed.

It is clarified that anything said hereinabove shall not be construed to be an expression on the merits of the case and the Trial Court shall proceed and conclude the trial on the basis of evidence led before it uninfluenced by any observation made hereinabove.

(SUVIR SEHGAL)

JUDGE

15.09.2022

Kamal

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