

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

CRR-1171-2021

Date of Decision: May 11, 2022

Asha

.... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Mr. Puneet Kumar Bansal, Advocate,
for the petitioner.

Vivek Puri, J.

The petitioner has assailed the order dated 06.08.2021 passed by the learned trial Court vide which the application under Section 319 of the Code of Criminal Procedure (for short 'Code') for summoning the respondent no.2 has been dismissed.

Briefly, an FIR No. 13, dated 02.03.2017, under Sections 376/313/34 IPC has been registered at Police Station Cantt. Ferozepur, on the basis of the statement of the petitioner alleging that she is aged about 23 years. Aman Alfred accused and his brother-in-law Anthony @ Babu, respondent no.2, used to stand in front of confectionary shop opposite her house. On one day, Aman Alfred called her by gestures and presented that he want to solemnize marriage with her. Subsequently, the petitioner and Aman

Alfred started meeting each other. One day Aman Alfred and respondent no.2 called her at the house of Aman Alfred at Octroi No.8, Faridkot Road, Ferozepur, where he made forcible physical relations with her despite her resistance on the pretext of solemnization of marriage. In January, 2016 and August 2016, the petitioner became pregnant and on both the occasions, Aman Alfred in connivance with the respondent no.2 administered some medicines forcibly and caused abortion.

On the false pretext of solemnizing the marriage, Aman Alfred had been committing rape for a period of two years and in connivance with the respondent no.2 got her aborted twice.

On conclusion of investigation, the respondent no.2 was found to be innocent and the challan was presented against Aman Alfred accused.

During the course of proceedings in the trial Court, an application under Section 319 of the Code was moved on behalf of the prosecution for summoning the respondent no.2 and face trial for having committed the offence under Section 376, 313, 420 read with Section 34 of the Indian Penal Code. It was alleged that the respondent no.2 has been specifically named in the FIR, as well as, in the statement of the witnesses and there is sufficient

evidence with regard to the active role played by him in the commission of crime.

The application was resisted by Aman Alfred-accused and summoning was opposed on the score that there is a delay in lodging the FIR and there is no corroboration to the version of the petitioner by way of medical evidence on record. The investigating agency has not alleged any role against the respondent no.2 and no ground is made out to summon the respondent no.2 as an accused. Vide the impugned order, the application under Section 319 of the Code was dismissed.

Aggrieved by the aforesaid order, the petitioner has preferred the present revision petition.

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

The learned counsel for the petitioner has argued that the respondent no.2 was having love affair with the sister of Aman Alfred, who connived and concurred with Aman Alfred, brother-in-law in commission of crime. The name of respondent no.2 has been specified in the FIR and also during the course of deposition of the petitioner in the trial Court. Consequently, sufficient grounds are made out to summon him as an accused.

Section 319 of the Code confers power on the trial Court to find out as to whether a person ought to have been

committed as an accused has erroneously been omitted or has been deliberately excluded by the investigating agency and satisfaction has to be arrived at on the basis of the evidence so adduced during the course of trial. The power under Section 319 of the Code is discretionary and such discretion has to be exercised judiciously having regard to the facts and circumstances of the case. The power is extraordinary and is to be used sparingly and only if compelling circumstances exists.

The issue with regard to the scope and extent of powers of the Court to arraign any person as an accused during the course of trial in exercise of power under Section 319 of the Code has been considered by the Constitution Bench of the Hon'ble Supreme Court in the case of **Hardeep Singh v. State of Punjab, 2014 91) RCR (Crl.) 623**. After review various decisions, the Court summarized the legal position in the following words:-

“98. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary 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.”

The summoning of a person as an additional accused can be permitted only if more than a prima facie case as exercised at the time of framing charge, but short of satisfaction to the extent that the evidence, if goes unrebutted would lead to conviction is to be made out.

On advertng the merits of the present case, it is significant to note that the respondent no.2 has been declared innocent during the course of investigation by assigning sufficient and cogent reasons. It is not a case where he has been declared innocent without assigning satisfactory and reliable reasons.

During the course of investigation, an application was moved by Nagma, wife of respondent no.2, pleading

innocence of the respondent no.2. It was observed that the marriage of Nagma i.e. sister of Aman Alfred was solemnized with respondent no.2 in December, 2016 and started residing in the house at Octroi No.8, Partap Nagar, Faridkot Road from January 2017. Although, it was a love marriage, but the same was solemnized subsequent to the occurrence as narrated in the instant case. Prior to his marriage in December, 2016, it cannot be said that the respondent no.2 could have extended any help to Aman Alfred accused in committing sexual intercourse upon the petitioner. The allegation with regard to causing abortion has been leveled in the month of January, 2016 and August, 2016 and at that point of time, the respondent no.2 was not in any manner related to the co-accused. The respondent no.2 had not started residing in the house where the alleged occurrence took place at the point of time when the alleged occurrence took place and it sounds improbable that the respondent no.2 would have rendered any assistance in causing termination of pregnancy or facilitating physical sexual intercourse upon the prosecutrix.

The perusal of the report under Section 173 of the Code also indicates that there was a monetary dispute between M.C. Savastian Rai and Aman Alfred and he was on visiting terms with the petitioner. At the instance of M.C. Savastian Rai, the name of the respondent no.2 was

reflected at the time of the registration of a case. It has also been observed that on account of love marriage of Nagma with respondent no.2, her brother Aman Alfred was not on good terms and consequently, it was concluded that no role of the respondent no.2 has come forward in the matter of the petitioner and Aman Alfred accused.

It shall not be out of place to mention here that in the statement of the petitioner, which has been recorded in the trial Court, it is also emerging that she had moved an application to the Senior Superintendent of Police, Ferozepur in January, 2017, but had not mentioned with regard to the allegation of commission of rape.

In these set of circumstances, there is a lack of prima facie material and the case stands short of standard of degree of satisfaction which is required to summon the respondent no.2 as an accused in the instant case.

In these circumstances, the view taken by the learned trial Court appears to be reasonable and does not suffer from any perversity or illegality, which may call for any interference of this Court.

Instant petition is dismissed, accordingly.

May 11, 2022
vkd

(Vivek Puri)
Judge

Whether speaking/reasonable : Yes/No
Whether reportable : Yes/No