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

CRR-1197-2021

Date of Decision: January 06, 2022

Kavita

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Gourav Jain, Advocate for the petitioner

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RAJESH BHARDWAJ, J.

Matter has been taken up through video conferencing via Webex facility in the light of the Pandemic Covid-19 situation and as per instructions.

The petitioner has approached this Court by way of filing of this revision petition impugning order dated 03.09.2021 wherein the learned trial Court has partly accepted the application filed under Section 319 Cr.P.C. by accepting the same qua the proposed accused Kuldeep whereas dismissing the same qua the proposed accused Rohtash.

As per the factual matrix of the case, the FIR in question was registered by the prosecutrix (name concealed) on the basis of allegations levelled therein. It was alleged that on 23.05.2020 in the night when her husband went to the fields, the accused Rajpal alias Binder and Kuldeep, both came to her house when she was alone. Accused Rohtash was guarding outside and both the accused came inside. They threatened her that they would kill her brother-in-law and her husband, who is in fields. Thereafter

Kuldeep gagged her mouth and accused Rajpal alias Binder committed bad act with her. When her husband reached home, Rohtash, who was guarding outside the house, called Kuldeep by climbing on the roof and then Kuldeep ran away from the spot whereas Rajpal alias Binder had been caught. On 16.07.2020, the application was given to S.P.Fatehabad. The prayer was made to take the action against the culprits. The investigation commenced and during investigation, both the accused, i.e. Kuldeep and Rohtash were exonerated at the time of filing challan. During the trial, the prosecutrix was examined as PW1 whereas brother-in-law of the complainant -Naresh Kumar was examined as PW-3. They named both the accused during their depositions and hence, the application under Section 319 Cr.P.C. was filed by the complainant for summoning both the accused.

Learned trial Court after hearing both the parties partly accepted the same by summoning accused -Kuldeep whereas declining the same qua Rohtash.

Counsel for the petitioner has vehemently contended that the view taken by the trial Court in declining the prayer qua Rohtash is erroneous. He submits that respondent No.2 has been named in the FIR since beginning and he was wrongly exonerated by the Investigating Agency during investigation. He has drawn attention of this Court to the FIR as well as to the statements of the prosecutrix and that of her brother-in-law examined as PW1 and PW3 wherein the respondent No.2-Rohtash was specifically named. He submits that in view of the various judicial precedents, the view taken by the trial Court is unsustainable and thus, the same deserves to be set aside and respondent No.2 be summoned to face trial alongwith the co-accused.

Heard.

There is no doubt that name of respondent No.2 having been found mentioned in the FIR that he was guarding the place of occurrence. However, during investigation he was exonerated and kept in column No.2. Learned trial Court has appreciated the facts and the evidence on record. It has been observed that respondent No.2 is in Government service. There are evidence that a criminal case was got registered against the complainant party by the accused party. The occurrence in question took place on 23.05.2020 whereas the present FIR was registered on 12.10.2020, i.e. after about a period of five months. Respondent No.2 is a Government employee and his implication in the FIR would cause a maximum damage. As per the law settled by Hon'ble Apex Court in Hardeep Singh vs State of Punjab 2014(3) SCC 92, for summoning an accused under Section 319 Cr.P.C., the evidence against him should be more than the *prima facie* as required for framing of the charge but short of satisfaction to an extent that the evidence on record if goes un rebutted, the same would lead to conviction, relevant paras of which reads as under:-

“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.. 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."

In the case in hand the evidence collected on record does not satisfy the parameters laid down by the Hon'ble Apex Court in the above said case. The Court cannot summon additional accused in a cavalier manner and must proceed with circumspection.

In the overall facts and circumstances of this case, this Court does not find any illegality in the view drawn by the trial Court. Hence, the petition being devoid of any merit is hereby dismissed.

January 06, 2022
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(RAJESH BHARDWAJ)
JUDGE

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

Yes/No
Yes/No