

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(119)

CRR-1835-2022(O&M)
Date of Decision: 05.09.2022

Harman Singh & another

--Petitioners

Versus

State of Punjab

--Respondent

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

Present:- Mr. Vinay Kumar, Advocate for the petitioners.

RAJESH BHARDWAJ.J (Oral)

Petitioners have approached this Court impugning the order dated 12.7.2022 passed by the learned Additional Sessions Judge, Gurdaspur, whereby, the application under Section 319 Cr.P.C. for summoning Harman Singh son of Sukhwinder Singh, Jaspreet Singh @ Jass son of Balvir Singh and Lovepreet Singh @ Sunny son of Narinder Singh for facing trial as additional accused, has been allowed.

As per facts of the case, the FIR in question was lodged by the victim herself. It was alleged that her date of birth is 21.12.2005 and she is a student of 10th class. A young boy namely German Singh of her village used to disturb her. On 4.7.2021 at about 12.30 AM German Singh scaled the wall of their house and by putting a handkerchief on her mouth forcibly took her away on the motorcycle. German Singh and Harman Singh forced her to sit on the Discover motorcycle and she was taken to a room in their fields. There she was raped by German Singh. During the rape Lovepreet Singh @ Sunny was holding her legs and Harman Singh was holding her arms and Jaspreet @ Jass was standing nearby. After having been raped German Singh took her on motorcycle and dropped her to house and

thereafter she narrated the incident to her father and FIR was registered.

After registration of the FIR, investigation commenced. During investigation both the petitioners i.e. Harman Singh and Lovepreet Singh as well as Jaspreet Singh @ Jass were kept in column no.2 and the challan was presented only qua accused namely German Singh. During the course of trial the victim reiterated her allegations against all the petitioners and thus an application under section 319 Cr.P.C was allowed. Aggrieved by the same, the petitioners are before this Court by way of filing the present revision petition.

Learned counsel for the petitioners has vehemently contended that the view taken by the learned trial Court is totally based on conjectures and surmises. He submits that after a thorough investigation the petitioners were found innocent and hence they were kept in column no.2. He submits that in plethora of judgements Hon'ble Supreme Court has held that court should not exercise the power vested under Section 319 Cr.P.C in a cavalier manner and the same has to be used sparingly but the learned Trial Court has failed to appreciate the same and thus has drawn a wrong conclusion in summoning the petitioners under section 319 Cr.P.C. He submits that the impugned order suffering from patent illegality deserves to be set aside.

I have heard counsel for the petitioners and perused the record.

A perusal of the record would show that all the three petitioners were duly named in the FIR lodged by the victim. Victim in this case is a minor. As per statutory provisions of section 29 and 30 of POCSO Act there lies a presumption against the accused. A perusal of the record

would also show that the prosecutrix had been naming all the accused persons since beginning.

The Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab and others, 2014(1) RCR (Criminal) 623*** has held as under:-

“98. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary 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 un rebutted, 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.”

It has been held by the Hon'ble Supreme Court that power of summoning under Section 319 Cr.P.C. is an extraordinary power which

cannot be used in a cavalier manner and the same has to be used sparingly.

The satisfaction of the Court for summoning the additional accused under Section 319 Cr.P.C. should be more than the satisfaction required for framing of the charge. The facts and circumstances of the present case when tested on the anvil of settled law does not call for any interference by this court. There are no cogent reasons given declaring the petitioners innocent during investigation.

In view of the attending circumstances and findings arrived at by the trial Court, this Court does not find any infirmity in the conclusion drawn by the trial Court. The petition being devoid of any merits, is hereby, dismissed.

(RAJESH BHARDWAJ)
JUDGE

05.09.2022

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