

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

CRR-1391-2021 (O&M)

Date of Decision: March 28, 2022

Kirana Devi *... Petitioner*
Versus

State of Punjab and others *... Respondents*

CORAM: HON'BLE MR. JUSTICE VIVEK PURI

Present: Ms. Rahish Pahwa and
Mr. Saksham, Advocates,
for the petitioner.

Vivek Puri, J.

The petitioner has impugned the order dated 16.09.2021 passed by the Court of learned Additional Sessions Judge, Ludhiana, vide which the applications under Section 319 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') and Section 216 of the Code moved by the prosecution have been dismissed.

The case bearing FIR No. 27, dated 17.04.2020, under Section 376 of the Indian Penal Code, at Police Station Women, Ludhiana, has been registered on the basis of the application submitted by the petitioner alleging that on the false pretext of solemnizing marriage, Manpreet Singh-accused had been committing rape upon her.

During the course of trial, an application under Section 319 of the Code was moved for summoning Balbir Singh, the father and Preeti, the sister of Manpreet Singh - accused as additional accused. It has been alleged that on 17.10.2019, Manpreet Singh-accused in connivance with his father Balbir Singh and sister Preeti had made an attempt to commit the murder of the petitioner by administering poisonous substance to her.

The application was resisted by Manpreet Singh-accused on the score that the names of his father and sister were nowhere mentioned in the challan and their names were even not reflected in the column no. 2 of the report under Section 173 of the Code. They are not even remotely connected with the instant case. After framing of the charge, 10 material witnesses have been examined and nothing material has emerged with regard to involvement of any other person. The application has been moved to fill up lacuna in the case and it will result in *de novo* trial.

Learned counsel for the petitioner contends that the FIR has been registered on 17.04.2020 on the application submitted by the

petitioner. On the following date i.e. 18.04.2020, the statement under Section 161 of the Code of the petitioner was recorded, wherein she has alleged that on 17.10.2019, during the night of karwa chauth, Manpreet Singh called her to his house. He gave beatings along with his father Balbir Singh and sister Preeti and tried to eliminate her by giving poison at about 2 AM on 18.10.2017. Even this version has been narrated by the petitioner in her deposition during the course of trial. Consequently, it has been argued that from the material on record, it appears that Balbir Singh, the father and Preeti, the sister of Manpreet Singh-accused have also committed the offence and accordingly, they are liable to be summoned and tried along with him. Learned counsel for the petitioner has further argued that during the intervening night of 17.10.2019 and 18.10.2019, the petitioner was administered poisonous substance and she was taken to hospital. The matter was also reported to the police and entry in the general diary bearing GD No. 39 dated 18.10.2019 was recorded.

The provisions of Section 319 of the Code empowers the Court to proceed against any person

not shown or mentioned as accused, if it appears from the evidence that such person has also committed an offence for which he could be tried together with the main accused. The object of Section 319 of the Code is to ensure that no one who appears to be guilty escapes the trial. The power exercisable under this Section is an extraordinary power conferred on the Court to advance real and substantial justice. It is required to be used with care, caution, circumspection and only if compelling reasons exist for proceeding against a person against whom no action has been initiated. Furthermore, there must be strong and cogent evidence indicating the involvement of those persons in the commission of crime.

The Constitution Bench of the Hon'ble Supreme Court in Hardeep Singh Vs. State of Punjab and others, (2014) 3 SCC 92, has observed as following:-

"105. Power under Section 319 CrPC 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.

106. 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 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused."

In Ramesh Chandra Srivastava Vs. State of U.P. & another, 2021(4) RCR (Crl.) 219 (Supreme Court), it has been held as following:-

"The test as laid down by the Constitution Bench of this Court for invoking power under Section 319 Cr.P.C. inter alia includes the principle that only when strong and cogent evidence occurs against a person from the evidence the power under Section 319 Cr.P.C. should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by this Court, is one which is more than prima facie case which is applied at the time of framing of charges."

Furthermore, in Sagar Vs. State of U.P. and another, 2022(2) RCR (Crl.) 344 (Supreme Court) it has been observed as following:-

"The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above 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."

On advertng to the merits of the present case, the first version of the case has been unfolded in the application on the basis whereof FIR has been registered. Significantly, the only allegation against the parents of Manpreet Singh is to the effect that they had been saying that they have ousted Manpreet Singh-accused and they were not willing to keep Manpreet Singh. Significantly, there is no whisper of allegation with regard to any beatings given to the petitioner by the father and sister of Manpreet Singh-accused or administering any poisonous substance during the night hours. The perusal of the impugned order also indicates that the petitioner had submitted three complaints on different dates i.e. on 12.02.2020, 13.02.2020 and 13.03.2020. The FIR has been registered on the basis of the complaint dated 13.03.2020. Significantly, in none of the aforesaid three complaints any allegation with regard to the alleged occurrence dated 17.10.2019 has been spelt out. Even the father and the sister of

Manpreet Singh-accused were not arraigned as an accused in the FIR or during the course of investigation. Even their names have not been reflected in the column no.2 of the report under Section 173 of the Code.

The first version with regard to the occurrence which allegedly took place during the intervening night of 17.10.2019 and 18.10.2019 has emerged when the matter was reported to the police vide GD No. 39 dated 18.10.2019 (Annexure P/9) recorded at Police Station Sarbha Nagar. The perusal of the same indicates that the allegations levelled against the father and the sister of Manpreet Singh are to the effect that they had given beatings to the petitioner. Even in the statement on the basis whereof the entry in general diary has been recorded, there is no mention with regard to the administration of any poisonous substance to the petitioner by Manjeet Singh in connivance with his father and sister. The allegations with regard to the administering the poisonous substance have been unfolded in the statement under Section 161 of the Code which has been recorded subsequent to the registration of the FIR and in the statement recorded during the

course of trial. The absence of any version with regard to the administration of poisonous substance in the earlier three complaints submitted by the petitioner and more particularly in the general diary bearing GD No. 0039 dated 18.10.2019 is indicative of the fact that such allegations are being raised as a result of afterthought. In the instant case, it cannot be said that the case as sought to be put forth against the proposed accused is more than a prima facie which is to be applied at the time of framing of charges. Rather, as already observed it appears to be a version created as a result of afterthought.

Consequently, no illegality or irregularity is made out in the impugned order, which may warrant interference by this Court.

Instant petition is dismissed accordingly.

March 28, 2022
vkd

(Vivek Puri)
Judge

Whether reasoned/speaking:	Yes
Whether reportable :	Yes