

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

CRR-2033-2022

Date of Decision: 27.09.2022

Victim "A" (name withheld)

..... Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Manoj K. Sharma, Advocate, for the petitioner.

Rajesh Bhardwaj, J.

The petitioner has approached this Court impugning the order dated 2.8.2022 passed by the learned Addl. Sessions Judge, Fast Track Court, Panipat, whereby, the application filed by the petitioner under Section 319 Cr.P.C. for summoning respondent No.2-Naveen as additional accused to face trial alongwith the accused, who is already facing trial, has been declined by the trial Court.

As per the facts of the case, the FIR was lodged by the mother of the victim, wherein she alleged that her daughter (victim) who is 22 years of age went missing from home. On confirmation, she found that Deepak had enticed her away on the pretext of marriage. The FIR was lodged for taking legal action. On registration of the FIR, investigation commenced and the challan was presented against accused Deepak. However, during trial the prosecutrix was examined as PW-16, wherein she named respondent No.2-Naveen as well for his complicity and thus, filed application under Section 319 Cr.P.C. for summoning him. After hearing the parties, the learned trial Court declined the same vide order dated 2.8.2022. Aggrieved by the same, the petitioner is before this Court by way

of filing the present petition.

Learned counsel for the petitioner has vehemently contended that the learned trial Court has fallen in error in declining the application under Section 319 Cr.P.C. filed by the petitioner. He has submitted that the prosecutrix appeared as PW-16 on 25.5.2022 and in her examination-in-chief she specifically deposed that apart from accused Deepak, who is already facing trial, his brother Naveen had committed rape with her. She alleged that she was threatened by respondent No.2-Naveen to make viral her obscene photographs on social media, thus, she was blackmailed by him. However, the trial Court failed to appreciate the same and illegally declined the application for summoning respondent No.2-Naveen. He has relied upon the judgment of Hon'ble Supreme Court in case of Manjeet Singh vs. State of Haryana and others, 2021 (4) RCR (Criminal) 25 and has submitted that the impugned order deserves to be set aside and respondent No.2 be directed to be summoned to face the trial alongwith the accused already facing trial.

Heard.

Apparently, the FIR in question was lodged by the mother of the prosecutrix, wherein, only the name of accused Deepak was mentioned and respondent No.2- Naveen was never named in the same. During the investigation, statement of the prosecutrix was recorded under Section 164 Cr.P.C. and even in this statement, the prosecutrix deposed nothing about respondent No.2-Naveen. A thorough and fair investigation was conducted by the Investigating Agency and thereafter, challan was filed under Section 173 Cr.P.C. Even during the investigation no material was found regarding involvement of any other accused in the alleged offence. However after

having been recorded about 15 prosecution witnesses, prosecution stepped into the witness box as PW-16 and for the first time she named respondent No.2-Naven having complicity in the alleged offence. As per the law settled by Hon'ble the Apex Court in Hardeep Singh vs. State of Punjab and others, (2014) 3 SCC 92, power under Section 319 Cr.P.C. is to be exercised with extreme care and caution. It is evident that Hon'ble Supreme Court has laid down that power under Section 319 Cr.P.C. is extraordinary in nature and cannot be used in a cavalier manner. The satisfaction of the Court in summoning the proposed accused should have been more than the satisfaction required for framing of charges. However, the facts and circumstances of the present case, do not qualify on the parameters set by Hon'ble the Apex Court. Applying the law settled to the facts and circumstances of the case, it is deciphered that name of respondent No.2-Naveen has surfaced after a considerable long time for the first time, when the prosecution was examined as prosecution witness. During the investigation and in the examination of the other prosecution witnesses no evidence was found regarding the involvement of respondent No.2. In the totality of the facts and circumstances of the case and in view of the law settled, this Court finds that the view taken by the Court below suffers from no illegality. Thus, the petition being devoid of any merit, is hereby dismissed.

27.9.2022
sharmila

(RAJESH BHARDWAJ)
JUDGE

Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No