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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-41219-2019

Date of Decision: April 25, 2022

Sukhdeep Singh

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.J.S.Maani pur, Advocate, for the petitioner.

Mr.Neeraj Poswal, AAG, Haryana.

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RAJESH BHARDWAJ, J.(ORAL)

Petitioner has approached this Court by way of this petition impugning the order dated 17.07.2019 passed by learned Additional Sessions Judge, Yamunanagar at Jagadhri, reversing the order dated 19.09.2018, passed by learned Judicial Magistrate Ist Class, Yamunanagar, wherein the petition filed by the prosecution under Section 319 Cr.P.C. was dismissed.

As per facts of the case, the present FIR in question was lodged by the mother of the victim. It was alleged that her daughter, i.e. the victim, was studying in 9th standard and her date of birth was 07.09.2001. On the fateful day, she received the information on phone that Manish s/o Hari Om had taken the victim on his motorcycle by alluring her and committed wrong act with her. Thereafter, two boys came there who caught hold the hand of the victim and uttered indecent words. On asking of her mother, the victim told that she was taken by Manish on his motorcycle against her will and he caught hold her hand and started doing obscene acts with her. She managed

to escape from the custody of Manish.

On the basis of above-mentioned allegations, FIR was lodged and investigation commenced. During investigation, the statement of the victim under Section 164 Cr.P.C. was recorded on 18.03.2016. Thereafter the challan was presented. At the time of presentation of challan, the petitioner and the co-accused Nitu were declared innocent and thus, the challan was filed only against the co-accused. On the commencement of the trial, the complainant was examined as PW5 wherein she deposed against the petitioner and thus, the prosecution filed an application under Section 319 Cr.P.C. for summoning the accused Sukhdeep Singh and Nitu @ Satish as additional accused.

Learned Principal Magistrate, Juvenile Justice Board Court, Jagadhri, heard the parties and declined the same vide its order dated 19.09.2018. Aggrieved by the same, the complainant filed the revision petition impugning the order dated 19.09.2018 before the learned Additional Sessions Judge, Yamunanagar, who after hearing the parties set aside the order passed by the Magistrate and thus, allowed the petition filed under Section 319 Cr.P.C. for summoning the petitioner. Aggrieved by the same, the petitioner has approached this Court.

It has been contended by learned counsel for the petitioner that the learned revisional Court has fallen in error in reversing the order passed by the learned Magistrate. He submits that name of the petitioner was not mentioned in the FIR lodged by the mother of the victim. He further submits that during investigation, the statement of the victim was recorded under Section 164 Cr.P.C. on 18.03.2016, in which she levelled allegations against the petitioner of holding her hand. Thereafter while appearing as

PW5 during the trial she deposed against the petitioner. He has submitted that the petitioner has been falsely implicated in this case as his name has been deliberately roped in after due deliberations. He further submits that after the proceedings having been stayed by this Court, the trial continued qua the main accused and on commencement of the trial, he stands acquitted on 13.11.2019. He submits that name of the main accused was there in the FIR since the very beginning and after the trial he has been acquitted. So far as the petitioner is concerned, his name was involved later on and thus, his false implication is writ large as the main accused stands acquitted. He further submits that case of the petitioner stands on strong footing. He submits that as per the law settled, provisions of Section 319 Cr.P.C. is extraordinary in nature and the same cannot be invoked in a mechanical manner. Learned Magistrate had rightly declined the application filed under Section 319 Cr.P.C. whereas the learned Additional Sessions Judge has drawn a wrong conclusion in reversing the same. He submits that the petition deserves to be allowed and summoning of the petitioner and the impugned order dated 17.07.2019 passed by learned Additional Sessions Judge, Yamunanagar at Jagadhari be set aside.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and has submitted that the petitioner was duly named by the victim in her statement recorded under Section 164 Cr.P.C. and thereafter in the statement made by the complainant as PW5. He submits that learned Additional Sessions Judge has rightly reversed the order of the Magistrate and hence, the impugned order suffers from no illegality whatsoever. However, he candidly acknowledges that the main

Heard.

After hearing the counsel for the parties and perusing the record, it is apparent that the petitioner was not at the first instance when mother of the victim lodged the FIR, however, when statement under Section 164 Cr.P.C. was recorded, the victim mentioned his name and thereafter at the time of her examination before the trial Court as PW5 again she reiterated the name of the petitioner. For the adjudication of the issue in hand the provisions of Section 319 Cr.P.C. needs to be appreciated.

319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under subsection (1), then-(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

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 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.”

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.

The main accused has already been acquitted. In the facts and circumstances of the present case, this Court finds that the impugned order dated 17.07.2019 suffers from illegality and hence the same is set aside and order dated 19.09.2018 is upheld.

Petition stands allowed in the above terms.

April 25, 2022
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(RAJESH BHARDWAJ)
JUDGE

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

Yes/No
Yes/No