

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

CRM-M-54518-2021

Date of decision : 07.04.2022

Annu Sharma

.....Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Simranjeet Singh Sidhu, Advocate
for the petitioner.

RAJESH BHARDWAJ, J. (Oral)

Petitioner has approached this Court for setting aside the order dated 01.10.2021 in FIR No.06 dated 06.02.2019, registered under Sections 323, 354, 376, 511, 507, 509, 120-b, 34 of Indian Penal Code, registered at Police Station Women, Ballabgarh Faridabad whereby the application filed by the petitioner under Section 319 Cr.P.C. for summoning the proposed accused has been dismissed.

As per the facts of the case, the present FIR in the case was lodged on the statement of the prosecutrix. In the nutshell, she alleged that on 26.01.2019, Komal daughter of Sawai Ram came to her house and her brothers namely, Monu, Sonu; her sister Anjali and her mother Shanti Devi spoke vulgar language to her and misbehaved with her. On 27.01.2019, they physically assaulted her and torn her clothes. All of them gave beatings to her husband and Sawai Ram tried to rape her. The FIR was lodged to take the legal action against the culprits. On the conclusion of the investigation, the challan was presented only against two of the accused i.e. Sawai Ram and Komal whereas, rest of the accused named in the FIR were found innocent. The prosecutrix appeared before the trial Court at the time

of examination and reiterated her allegations as in the FIR and on the basis

of the same, the application under Section 319 Cr.P.C. was filed for summoning the accused i.e. (i) Prem (ii) Monu son of Sawai Ram (iii) Shanti wife of Sawai Ram (iv) Sheetal wife of Prem (v) Poonam. After hearing the parties, learned trial Court declined the same vide its impugned order dated 01.10.2021. Aggrieved by the same, petitioner has approached this Court by way of the present petition.

Learned counsel for the petitioner has submitted that learned trial Court has fallen in error in declining the application filed by the petitioner. He has submitted that the prosecutrix has specifically levelled the allegations against all the accused. However, during investigation, the investigating agency illegally declared them innocent without taking into consideration the evidence on record. He submits that no reason was given by the investigating agency in declaring all these proposed accused innocent. He has submitted that there were specific allegations regarding beatings, abuses etc. by all these proposed accused and thus, there was no reason for declaring them innocent. He further submits that during her examination, prosecutrix has duly supported the case of the prosecution, while giving statement under Section 164 Cr.P.C. and thereafter, while her examination by the trial Court as PW-8 and thus, the Court has not used its power granted under Section 319 Cr.P.C. as per the mandate of the law and hence, the same deserves to be *set aside* by summoning all the proposed accused.

I have heard counsel for the parties and perused the records.

After hearing counsel for the petitioner and perusing the record, it is inferred that the prosecutrix was examined as PW-8 and her husband as PW-10 who have reiterated the allegations levelled earlier.

However, there was no fresh evidence produced before the Court. While

recording her statement under Section 164 Cr.P.C., the prosecutrix though made allegations against Sawai Ram but there was no allegations against the proposed accused. There was no allegations regarding complicity of the proposed accused. Thus, the statement of the prosecutrix recorded in the Court was at variance from her earlier statement. The case was thoroughly investigated by the investigating agency and on the conclusion of the same, the charge-sheet was filed against two of the accused out of the total seven accused mentioned in the FIR. The statutory provisions of Section 319 Cr.P.C. reads as under:-

“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 sub-section (1), then-
 - (a) the proceedings in respect of such person shall be commenced afresh, and 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.”

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 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.

Weighing the facts the circumstances of the present case on the

anvil of the law settled by the Hon'ble Supreme Court in **Hardeep Singh**

case (supra), this Court finds that the view taken by the learned trial Court suffers from no infirmity and hence, the petition being devoid of any merits is hereby dismissed.

07.04.2022
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No