

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(119)

CRR-2595-2022(O&M)
Date of Decision: 30.11.2022

H

--Petitioner

Versus

State of Haryana & others

--Respondents

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

Present:- Mr. R.P.S. Brar, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

Petitioner has approached this Court by way of impugning the order dated 19.9.2022 passed by the learned Additional Sessions Judge, Gurugram, whereby, the application under Section 319 Cr.P.C. for summoning respondents no.2 to 9 for facing trial as additional accused, has been dismissed.

As per facts of the case, the FIR in question was lodged by the victim herself, wherein it was alleged that she was M.A. M.Ed. Qualified and took admission in M.A in Dronacharya College, Gurgaon in the year 2014-2015. There she came in contact with one Mukesh son of Chandu Lal, who used to harass her. Though, he was married but he confided to her that his relationship with his wife was not cordial and they were going to be divorced. He promised her to marry. Gradually he started expressing that the victim was under some supernatural power and she needed treatment and for the same he took her to some Maulvi, who gave her some sweets and he advised her to establish the physical relations with Mukesh in order to get cured. Thereafter, he started calling her as well. In the absence of her parents Maulvi came to her house with Mukesh and performed some

occult practice. Thereafter, Mukesh time and again started compelling her to perform court marriage. He used to post her photographs on the social media as well to defame her. He took her to Arya Samaj Mandir, where he clicked her photographs with Sehra on his head. He started blackmailing her and threatening her to pay the money as well. In the year 2017 victim received Rs.88,000/- as Scholarship and Mukesh took Rs.35,000/- out of the same by blackmailing her and the money was never returned. She remained under depression. It was alleged that all three brothers of Mukesh i.e. Sanjay, his wife Geeta, Rai Singh his wife Jayanti and Daulat always encouraged Mukesh to commit wrong act. She was threatened to be kidnapped. A request was made to the police to take legal action against the culprits.

After registration of the FIR, investigation commenced. During investigation the allegations pertaining to taking the money from the victim by blackmailing her were not substantiated and hence the relevant offence was deleted. So far as the allegations against the co-accused other than Mukesh, as mentioned in the FIR were not substantiated and hence they were kept in column no.2 and the police filed challan only qua main accused Mukesh. During the course of trial the victim reiterated her allegations against all the petitioners and thus a petition under section 319 Cr.P.C was filed summoning respondents no.2 to 9 to face trial as additional accused along with Mukesh. However, the learned Trial Court dismissed the same. Aggrieved by the same, the petitioner is before this Court by way of filing the present revision petition.

Learned counsel for the petitioner has vehemently contended that the view taken by the learned trial Court is totally based on conjectures and surmises. He submits that victim had specifically levelled the allegations qua respondents no.2 to 9. It is submitted that complicity of the Maulvi Shahid was alleged by the victim alleging that how he in connivance with Mukesh and co-accused had committed the offence. Counsel submits that other persons named in the FIR were hand-in-glove with the main accused Mukesh as they encouraged Mukesh to make a false promise of marriage to the victim but the investigating agency has not carried out a fair investigation and thus illegally exonerated them at the time of filing of challan. He submits that this court has immense powers under section 319 Cr.P.C and as the victim has deposed against the respondents while being examined by the Trial Court, thus, there is evidence for summoning the respondents to face trial along with main accused Mukesh. 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 dismissed the application under section 319 Cr.P.C. He submits that the impugned order being suffering from patent illegality deserves to be set aside.

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

There is no gainsaying that the victim has lodged the FIR in question naming Mukesh and other respondents. A bare perusal of the allegations made in the FIR would reveal that the main thrust of the

allegations was against main accused Mukesh, however, respondents no.2 to 9 were also named by the victim. The investigating agency carried out a thorough investigation but found no substantial evidence against respondents no.2 to 9. The FSL report was also relied upon by the investigating agency and hence they were declared innocent at the time of filing of challan. For resolving the issue in hand, the relevant Section 319 Cr.P.C is to the appreciated and is being reproduced hereunder:-

“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.”

In *Hardeep Singh Vs. State of Punjab and others, 2014(1)*

RCR (Criminal) 623 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. The facts and circumstances of the present case when tested on the anvil of settled law would fail to qualify for accepting the application filed under Section 319 Cr.P.C.

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

30.11.2022

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