

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

CRR-209-2023

Reserved on:- 12.04.2023

Pronounced on:- 24.04.2023

Vikas Goyal

....Petitioner

Vs.

State of Haryana

...Respondent

CORAM:-HON'BLE MS. JUSTICE AMARJOT BHATTI

Present:- Mr. Harsh Mehla, Advocate
for the petitioner.

Ms. Ambika Sood, Additional A.G. Haryana.

AMARJOT BHATTI, J.

1. The petitioner- Vikas Goyal has filed revision against the impugned order dated 27.10.2022 passed on application under Section 319 Cr.P.C. vide which he has been ordered to be summoned to face trial under Sections 460, 326, 326A, 380 and 436 of IPC in FIR No. 0142 dated 18.04.2016 registered at Police Station Civil Line, Sonipat alongwith other accused.

2. The brief facts of the case are that the aforesaid FIR was registered on the statement of complainant – Komal regarding the occurrence which took place with her on the intervening night of 16/17.04.2016 while she was sleeping in her room. At about 12:00-01:00 A.M. two boys in the age group of 20/21 years entered her house and started demanding money. She told them that she was not having money.

On this, those boys hit her face with an iron screwdriver and also hit her

face with a glass bottle. She was caused injuries on her body, as a result, she fainted. On the next day, at about 10 o' clock morning, Vikas Goyal (the present petitioner) came to her house and on seeing her condition admitted her in Civil Hospital Sonipat from where he took her to PGI Khanpur and further she was referred to Delhi. She was also admitted in Safdarjung Hospital, Delhi by Vikas Goyal. In this occurrence, she lost her eye sight. On the basis of this statement, present FIR was registered. During investigation, Bindan alias Juddi and Chaurwa alias Chhotu alias Sahil were arrested on 26.04.2016, whereas, Ranjan was arrested on 27.04.2016. After completion of investigation, challan was presented.

The charge-sheet was framed and the statement of complainant – Komal was recorded as PW-17. Thereafter, the prosecution moved application under Section 319 Cr.P.C. to summon Vikas Goyal, Investigating Officer SI Krishan Chand, No. 37/RR and the doctor who declared her fit to make statement, as accused to face trial in the present FIR on the basis of version put forward by Komal as PW-17. The said application under Section 319 Cr.P.C. was disposed of by passing impugned order dated 27.10.2022 vide which the application filed by the prosecution to summon the Investigating Officer SI Krishan Chand and the doctor who declared the complainant fit to make statement was declined, whereas, Vikas Goyal, the present petitioner was ordered to be summoned to face trial along with other accused. Feeling aggrieved of this order, the present revision has been preferred.

3. I have heard the arguments advanced by learned counsel for the petitioner as well as learned counsel representing the State and have gone through the record carefully.

The learned counsel for the petitioner argued that the impugned

order dated 27.10.2022 has been passed without proper appreciation of the facts of the case and the evidence on record. There was no allegation against him in the FIR lodged on the statement of Komal. The copy of FIR is Annexure P-1. He was not named in the entire investigation. The challan was presented only against three of the accused. The copy of challan report is Annexure P-2. The statement of complainant was recorded in the Court on 14.09.2018 as PW-17 and her examination-in-chief was deferred. The copy of statement is Annexure P-3. On 21.09.2019, she was recalled for further statement and in that statement she levelled allegation against him for the first time that he also accompanied the said assailants when the complainant was caused injuries. The copy of said statement of complainant as PW-17 is Annexure P-4. It is argued that the statement of complainant was recorded by the Investigating Officer after she was declared fit to make statement. The complainant has changed her version altogether when she appeared in the Court for her further statement on 21.09.2019. Learned trial Court failed to exercise its discretion without proper appreciation of the facts of the case as well as the documents on record. To support his argument, he has relied upon the authority cited in *(2019) 9 Supreme Court Cases 805* in case titled as **Mani Pushpak Joshi Versus State of Uttarakhand and Another**, where it was reiterated by the Hon'ble Supreme Court of India that "*the power under Section 319 Cr.P.C. is discretionary and extraordinary power to be exercised sparingly and only in those cases where circumstances of the case so warrant.*" It was further explained that "*for the exercise of power under Section 319 Cr.P.C., it is not necessary that the witness is cross-examined. 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 evidence, if goes un rebutted, would lead to conviction.” It was held that *“in the absence of such prima facie satisfaction of the standard as laid down, the Court should refrain from exercising power under Section 319 Cr.P.C.”* The learned counsel by relying upon the aforesaid authority prayed that the impugned order dated 27.10.2022 passed by learned Additional Sessions Judge, Fast Track Court, Sonipat is without justification and without proper appreciation of the facts of the case. Therefore, the same may be set aside by accepting the present revision.

4. On the other hand, learned counsel representing the State pointed out that the complainant had suffered serious injuries in the aforesaid occurrence and she was hospitalized for a long time. In this occurrence, she lost her eye sight of both the eyes. The initial statement recorded by the Investigating Officer on 18.04.2016 cannot be safely relied upon as she was still hospitalized and under trauma. The complainant has narrated all the facts clearly when her statement was recorded in the Court as PW-17 dated 21.09.2019, which is Annexure P-4. The statement of complainant cannot be ignored. She has attributed specific allegations against the present petitioner. The motive explained by the victim also indicates towards the petitioner for the commission of said offence. Therefore, considering the statement of complainant recorded as PW-17, Annexures P-3 and P-4, the petitioner was rightly summoned to face trial by passing detailed order dated 27.10.2022. The present revision is without merits and the same may be dismissed.

5. I have considered the arguments advanced before me. I have also

Carefully gone through the documents on record. In this case, on the statement of complainant – Komal, present FIR No. 0142 dated 18.04.2016 under Sections 34, 458 of IPC (Sections 201, 436, 380, 411, 459 and 326A of IPC added later on), Police Station Civil Line, Sonipat was registered. The contents of the FIR indicate that the occurrence took place on the intervening night of 16/17.04.2016 when she was sleeping in her room. At about 12:00-01:00 A.M., two boys aged around 20/21 years entered her house and asked for money. She did not give them money. On this, she was hit by the said boys with a screwdriver and a bottle and some chemical was also poured in her eyes and on receiving the said beating, she fainted. Vikas Goyal came in the morning and on seeing her condition, she was admitted in the hospital.

The contents of FIR indicates that initially she has not levelled any allegation against Vikas Goyal, the present petitioner. He was the one who took her for treatment from Civil Hospital, Sonipat to PGI Khanpur and ultimately admitted in Safdarjung Hospital, Delhi. The Investigating Officer recorded the statement of Komal after getting fitness certificate from the concerned doctor. The copy of FIR is Annexure P-1. After the recording of initial statement, on 18.04.2016, the supplementary statement of the complainant was also recorded dated 11.06.2016, which is Annexure R-1. After completion of investigation, challan was presented. The copy of challan report is Annexure P-2. As per the challan report, two of the accused namely Bindan alias Juddi and Chaurwa alias Chhotu alias Sahil were arrested on 26.04.2016, whereas, Ranjan was arrested on 27.04.2016. Even during the investigation, the present petitioner was not named. The charge-sheet was framed and the prosecution evidence was

under progress. The present petitioner stepped into the witness box as PW-

1. His statement recorded in the Court dated 21.02.2017 is Annexure P-6. The complainant stepped into the witness box as PW-17. Her examination-in-chief was recorded on 14.09.2018, Annexure P-3 and further examination-in-chief was deferred. In this statement, she narrated the facts as mentioned in the FIR. After a gap of one year, when she was again recalled for remaining statement, she has given altogether new version alleging that along with the two assailants, there was another person who was with muffled face and wearing same clothes which the petitioner was wearing on that day. She also claimed that the petitioner used to quarrel with her and the said occurrence took place at his instance. The said statement recorded on 21.09.2019 is Annexure P-4. This fact cannot be ignored that a new version came forward naming the present petitioner for the first time on 21.09.2019 i.e. after a gap of 03 years and 05 months. On the basis of this statement, application was filed for summoning of present petitioner along with the Investigating Officer and the doctor who declared the complainant fit to make statement. The copy of application dated 15.11.2019 is Annexure P-5. The first version put forward by the complainant at the time of registration of FIR as well as when her statement was recorded in the Court on 14.09.2018, Annexure P-3 remained consistent regarding the occurrence and after a gap of long years, when she was again called for remaining statement in examination-in-chief, she gave altogether a new version for the reasons best known to her, which is Annexure P-4. The challan report presented in this case indicates that three accused were arrested who were facing trial. Their disclosure statements were recorded and stolen articles belonging to the complainant were also recovered from their possession. These accused persons never

named the present petitioner that at his instance the said occurrence took place or he was also accompanying them. The perusal of impugned order dated 27.10.2022 further indicates that Ranjan – accused is facing trial before the trial Court, whereas, the other accused namely Bindan alias Juddi and Chaurwa alias Chhotu alias Sahil were declared juveniles.

Considering the aforesaid factual position, the changed version of the complainant as PW-17, Annexure P-4 cannot be safely relied upon. The learned trial Court while disposing of the application under Section 319 Cr.P.C. failed to consider the previous investigation as well as the statements recorded in the Court. In the given facts and circumstances of the case and by relying upon the authority cited in **(2019) 9 Supreme Court Cases 805 (supra)**, I do not find sufficient reliable consistent record on the file to summon the present petitioner to face trial along with the other accused by filing application under Section 319 Cr.P.C. Resultantly, the revision filed by the petitioner – Vikas Goyal is accordingly accepted and the impugned order dated 27.10.2022 is accordingly set aside.

Pending application(s), if any, also stands disposed of.

24.04.2023

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(AMARJOT BHATTI)
JUDGE

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No