

104 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-357-2023 (O&M)
Decided on : 08.02.2023

Pinki and another

..... Petitioners

Versus

State of Haryana

..... Respondent

CORAM : HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. C.R.Dahiya, Advocate
for the petitioners.

Manjari Nehru Kaul, J.(Oral)

Petitioners are impugning the order dated 06.01.2023 vide which they were ordered to be summoned as an additional accused and to face trial alongwith other accused, who already stood challaned and are facing trial.

Learned counsel for the petitioners inter alia contends that subsequent to the registration of FIR No.125 dated 07.08.2018 under Sections 147, 149, 323, 342, 506 IPC (Sections 34, 307, 325 IPC added later on), petitioners were rightly found innocent by the investigating agency and placed in Column No.2. In support of his submissions, learned counsel has drawn the attention of this Court to the report filed under Section 173 Cr.PC (Annexure P-2). It has been further contended that a false and concocted version having been brought forth against the petitioners is apparent from the fact that the complainant had intentionally tried to rope in the entire family of the accused, as petitioner No.1 was the wife of co-accused

Kuldeep, and petitioner No.2 was wife of co-accused Sunny, by attributing trivial roles to them, without there being any corroborative evidence on record. Learned counsel has also submitted that on the fateful day, when the occurrence in question allegedly took place, petitioner No.2 was not even present in the village, which fact was found to be true by the investigating agency during their investigation. Learned counsel has further argued that while passing the impugned order, the trial Court had gravely erred in placing heavy reliance upon the opinion given by the Medical Board without as much as examining the witnesses, which had caused great prejudice to the petitioners. Learned counsel submitted that since the doctor was yet to be examined, the trial Court erred in summoning the petitioners merely on the deposition of complainant as PW-1. Learned counsel has lastly urged with vehemence that since powers under Section 319 Cr.PC are extraordinary, they should be exercised sparingly and not merely on the basis of bald and vague allegations levelled by the complainant party.

Heard learned counsel and perused the relevant material available on record.

Before proceeding further, it needs to be observed that merely because the investigating agency found a person innocent during investigation, would not be a ground for not summoning him/her as an additional accused under Section 319 Cr.PC as it would defeat the very purpose behind the enactment of Section 319 Cr.PC. It further needs to be pointed out that the object behind the enactment of Section 319 Cr.PC is to ensure that no one, who appears guilty, escapes trial in relation to that guilt.

Adverting to the case in hand, a perusal of the FIR in question (Annexure P-1), which was promptly lodged, reveals that the complainant had not only named both the petitioners along with other accused but also given a detailed and vivid account of the role played by each of them in the crime in question. The complainant after the occurrence in question was removed to the hospital on the same day and subjected to a medico-legal examination. While stepping into the witness box as PW-1, the complainant reiterated the allegations levelled against all the accused including the petitioners of being picked up and taken from his house by the accused to their house where he was undressed and assaulted with iron rods and sticks on his person. After undressing the complainant, one of the accused namely Sunny allegedly prepared his video from his mobile phone.

Furthermore, it is a matter of record that when petitioner No.1 applied for the concession of bail before the trial Court, it was opposed by the prosecution on account of their role in the crime, though later on the investigating agency found her to be innocent and placed in Column No.2. Still further, while deciding an application under Section 319 Cr.PC, the Court below could not have examined the plea of *alibi* taken by petitioner No.2 and hence, the trial Court was perfectly justified in basing its order on the basis of evidence led before it. Needless to add, the truthfulness or otherwise of the prosecution story would be a matter of trial when the accused would get enough opportunity to cross-examine the prosecution witnesses including the doctors.

In the above facts and circumstances, this Court does not find

any merit in the instant petition and the same is accordingly dismissed.
However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

08.02.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable :	Yes/No