

In the High Court of Punjab and Haryana at Chandigarh

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CRR-254 of 2021

Date of Decision: 27.02.2023

Rimpy Bawa

---Petitioner

versus

State of Punjab and others

---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Kanwar Pahul Singh, Advocate
for the petitioner
Mr. Amish Sharma, AAG, Punjab

JAGMOHAN BANSAL, J. (ORAL)

The petitioner through the instant petition is seeking setting aside of order dated 18.01.2022 whereby learned trial court has dismissed application of the petitioner under Section 319 Cr.P.C. seeking summoning of respondents as additional accused.

The brief facts of the case are that petitioner lodged an FIR No. 62 dated 15.11.2019, under Sections 376 and 354-A IPC, at Police Commissionerate, Amritsar alleging that one Manjit Kumar used to love her when she was unmarried. She solemnized marriage with another boy and two sons were born from this wedlock. Manjit Kumar on the pretext of love persuaded her to institute divorce petition against her husband and asked that he will marry her after divorce. Under the false pretext of marriage, he took away Rs.

50,000/- and Rs. 1,00,000/- for starting business. She borrowed money from Gurvinder Singh after pledging her house and secretly without telling this thing to her husband and his family members. Manjit Kumar used to allow her to meet his family members so she was sure that Manjit Kumar will marry her. On the pretext of marriage, he kept on making physical relations with her. She moved an application dated 30.04.2019 before Women Cell where Manjit Kumar appeared and agreed to marry her but he did not perform marriage with her and further did not return Rs.4,00,000/-. There was no compromise between her and Manjit Kumar. Father, mother, sister and brother of Manjit Kumar have cheated her by taking Rs. 4 lakh on the pretext of marriage. The police investigated the matter and filed its report under Section 173 Cr.P.C. against Manjit Kumar and other family members were found innocent.

The prosecutrix during the course of trial, appeared before the trial Court and tendered her statement wherein she made the same set of allegations which were made in the FIR. On the basis of statement of the prosecutrix, the prosecution moved an application under Section 319 Cr.P.C. seeking summoning of private respondents herein. The application came up for consideration before Additional Sessions Judge, Fast Track Court, Amritsar who vide impugned order dated 18.01.2021 has dismissed application of the petitioner.

Learned counsel for the petitioner inter alia contends that allegations of the petitioner against family members of Manjit Kumar are categorical. The prosecutrix is consistent in her statement before police as well trial Court, however, trial court has dismissed

application of the prosecution under Section 319 Cr.P.C. in a mechanical and arbitrary manner.

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

The findings recorded by trial Court read as :-

“4. After considering the contentions of learned APP for the State as well as learned defence counsel and perusing the file it is found that present FIR was registered on the application Ex.P2 moved by the victim and the perusal of the said application shows that the allegations against the persons to be summoned are that they have helped the main accused Manjit Kumar in committing the cheating of Rs. 4,00,000/- with the complainant/victim. Even during the statement suffered by the victim before the police during the enquiry, no other allegation except the above stated application is made against the persons who are prayed to be summoned by the prosecution. During the arguments, the, attention of the witness has been drawn towards the statement under section 164 Cr.P.C. suffered by the victim before the court, whereby absolutely no allegation against these persons have been made by the complainant. The Hon'ble Punjab & Haryana High Court in Sandeep @ Sammu Vs. State of Haryana & Anr.

2020(2) Law Herald (P&H) 1207, has held that summoning of additional accused in rape- FIR was registered on the statement of the prosecutrix nowhere suggests the role attributed to the petitioner. So, in the light of above stated judgment and in view of the law laid down by the Hon'ble Supreme Court in Hardeep Singh Vs. State of Punjab, 2014(1) Law Herald (SC), 47, it has been held that for summoning an additional accused, the satisfaction to be recorded is more than that of prima facie case. So, in the present case as there are only allegation against the persons to be summoned, but these allegations are not suggestive of any role attributed to the persons to be summoned. So, in view of the above stated judgments and law laid down by the Hon'ble Supreme Court, this Court finds that there is no ground to summon the persons mentioned in the application under section 319 Cr.P.C. Accordingly, the application under section 319 Cr.P.C. is hereby dismissed."

From the perusal of findings recorded by trial Court, it transpires that petitioner is trying to implicate Manjit Kumar's family members. The petitioner at the time of commission of alleged offence was duly married and having two children. Despite being married and having two children, she developed physical relations with Manjit Kumar though as

per her, she was under wrong impression that Manjit Kumar would marry her. It appears that despite being married and mother of two children, the petitioner wanted to marry Manjit Kumar and on account of non-performance of marriage by Manjit Kumar with petitioner, she has developed grudge against Manjit Kumar's family members who have been found innocent by the police authorities.

Power to summon anyone cannot be exercised mechanically. Criminal law cannot be put into motion at the whims and caprice of anyone. It causes mental and physical agony to a proposed accused. It is well known fact that conclusion of trial takes time and every time accused has to appear before the trial court. If a person is ultimately acquitted for having found innocent, it does not cause loss to the complainant whereas alleged accused suffers a lot during pendency of trial.

In the present case, the findings recorded by trial Court are neither factually nor legally wrong warranting interference of this Court.

Dismissed.

(JAGMOHAN BANSAL)
JUDGE

27.02.2023

paramjit

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No