

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 120

Criminal Miscellaneous No.M-9964 of 2023

Date of Decision: *March 10, 2023*

Sunita

..... PETITIONER(S)

VERSUS

State of Haryana and others

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

. . .

PRESENT: - Mr. Balvinder Sangwan, Advocate and Ms. Prathama Duggal, Advocate for the petitioner.

. . .

Tribhuvan Dahiya, J (Oral)

This is a petition for quashing of the order dated 19.11.2022 passed by the Additional Sessions Judge, Bhiwani, and the order dated 09.08.2021 passed by the Sub-Divisional Judicial Magistrate, Loharu, in case FIR No.99 dated 05.08.2017, under Sections 147, 149, 323, 354-B, 365, 506 of IPC, registered at Police Station Behal, District Bhiwani, whereby the petitioner/complainant's application to summon respondents No.2 & 3 as additional accused has been dismissed.

2. As per allegations levelled by the petitioner/complainant, she came to her in-laws' house, which was locked. She entered the house by scaling a wall and found her room locked from inside. When she tried to break open the lock, the in-laws' family members - Surendra, Ramesh, Parmit, Monika, Sudesh and Molu Ram, abducted her and beat her up. The private respondents herein, who are children of the complainant's brother-in-law/*jeth* gave her beatings; respondent No.2 gave a stick blow on her head, and respondent No.3 also beat her up. After investigation, the police filed challan against the persons named by the complainant, except the private respondents.

3. Learned counsel for the petitioner contends that the complainant has been consistent in her version before the police as well as the trial Court, alleging commission of the alleged offences by the private respondents, who are sought to be summoned as additional accused. They have been wrongly placed in column 2 by the police accepting the plea of *alibi*, based on their call details and mobile tower location, which is a matter of trial. The final report under Section 173 (2) Cr.PC was, therefore, liable to be ignored and the private respondents deserved to be summoned.

4. A perusal of the impugned orders show that the Courts below have considered the relevant facts as well as the material on record to conclude that the private respondents were not required to be summoned as additional accused. The police file established that the private respondents, who are students, were not present on the spot at the time of alleged occurrence. They were in their respective hostels at Hisar. To verify the fact, the police has recorded statements of Seema, Sombir, Aman and Chanchal, who deposed regarding presence of the private respondents in their hostels at Hisar at the relevant time. Their statements are substantiated by call details and tower locations. It is, therefore, apparent on record that after due investigation and verification, the two private respondents, who are children of the complainant's brother-in-law, were placed in column 2.

5. Further, no additional material/evidence has been produced before the Court during trial which can warrant summoning of the private respondents as additional accused under Section 319 Cr.PC to face trial along with other family members/co-accused. As per settled law, merely because the complainant repeated her statements made to the police earlier, during her deposition before the Court also, in itself it is no ground to summon the persons named by her. Mere probability of committing the alleged offences, is not a sufficient ground to summon him/her as additional

accused under Section 319 Cr.PC. There has to be more than *prima facie* case against a person to do so, which has not been established in the instant case. The statements by the complainant have already been found false by the investigating agency after thorough and reliable investigation. Repeating of such statements before the trial Court would not be sufficient to summon the persons named by her as additional accused, as per law settled by the Supreme Court in *Hardeep Singh v. State of Punjab and others*, 2014 (1) R.C.R.(Criminal) 623.

6. Learned counsel for the petitioner has relied upon a judgment of this Court passed in *Gurjinder Singh and another vs. State of Punjab and another* 2022(4) RCR (Criminal) 206, to the effect that once the prosecutrix remains consistent in her statements to the police, the Magistrate under Section 164 Cr.PC and also before the trial Court, the same cannot be negated merely because the investigating agency has submitted a report declaring the accused innocent. The judgment is not applicable to the facts of the instant case. It is apparent on record that both the Courts below have opined on the basis of material on record that the private respondents are not required to be summoned as additional accused for valid reasons, as there is no evidence on record which could establish more than *prima facie* case against them.

7. In view thereof, there is no ground to entertain the petition.

8. Dismissed.

(Tribhuvan Dahiya)
Judge

March 10, 2023
payal

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No