

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M 10146/2020

Date of decision: 04.08.2023.

Sachin minor through his father

.....Petitioner

Vs.

State of Haryana

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Ms. Babita, Advocate for the petitioner.

Mr. Brijesh Sharma, AAG Haryana.

Nidhi Gupta, J.

Prayer in this petition under Section 482 Cr.PC is for setting aside the order dated 31.7.2019 (Annexure P/1) passed by Id. Addl. Sessions Judge, Sirsa whereby, in an application dated 15.7.2019 moved by the prosecution under Section 319 Cr.PC (Annexure P/2), the petitioner has been summoned as an accused to face trial in Sessions Case No. 39 of 2019 in case FIR No. 267 dated 1.10.2018 under Section 506 IPC and Section 6 of POCSO Act, 2012 registered at PS Sadar Dabwali, District Sirsa (Annexure P/3).

Ld. Counsel for the petitioner submits that the petitioner is a juvenile aged 10 years, and no offence is made out against the petitioner and therefore, he cannot be summoned to face trial. It is stated that the petitioner is not named in the FIR and his name was disclosed by the prosecutrix only in her statement under Section 164 Cr.PC. It is submitted that in any case there are no allegations of any active participation on the part of the petitioner, and it is for this reason that the police did not challan the petitioner. It is further

submitted that, even in the reply filed by the State no satisfactory explanation has been given by the respondent State as to why despite the statement of the victim under Section 164 Cr.PC, petitioner was not challaned.

Per contra, ld. State counsel submits that FIR in the matter was registered on the basis of statement of mother of the eight-year-old victim. It is submitted that co-accused of the petitioner who is brother of the petitioner stands convicted for commission of offence under Section 506 IPC and Section 6 of POCSO Act, 2012 and has been sentenced to undergo RI for 20 years with payment of fine of Rs.30,000/- vide order of sentence dated 16.11.2021. Ld. State counsel further submits that the petitioner has been categorically named by the victim as a participant in the crime. In this regard learned counsel refers to the statement of the victim under Section 164 Cr.PC, the relevant extract of which reads as under:-

“Q: What do you want to say?”

Ans:- On 28.9.2018 I was coming to recess towards my home. Pinky was accompanied with me. She had gone to her house. When I reached near Dharamshala, Sachin and Vikas were standing there. They forcibly dragged and took me in Dharamshala and they removed my clothes. Vikas has committed wrong act upon me. Sachin was also standing there. When the blood started oozing out, they ran away from there. During this occurrence I raised a noise, but nobody came there. Then I wear my clothes and went to home. Those boys had threatened me, so I did not disclose to anyone. On 1.10.2018 we went at Malout and then I told about it to my mother. We had also went to a Doctor at Malout”.

Ld. State Counsel submits that from the above statement of the victim under Section 164 Cr.PC it is evident that victim has not just named the petitioner, but the petitioner has participated actively in the crime. It is

submitted that even in her deposition as PW1, the victim has named the petitioner. Relevant extract of deposition of victim/PW1 is reproduced below:-

“On 28.09.2018, I was coming in recess from our school and when I reached near Dharamshala, accused Vikas, present in the court and Sachin (not challaned by police) were standing there. They forcibly took me in Dharamshala and they removed my clothes. Accused Vikas committed rape upon me. Sachin was also standing there. I raised noise but nobody come there. They threatened to kill me if I disclosed the incident to anyone. Accused Vikas and Sachin ran away from the spot. Due to threatening I was not disclosed the incident to anyone. On 01.10.2018, when we went to Malout then I had told the incident to my mother. My medical examination was conducted by the doctor. My statement was recorded by learned Magistrate on 04.10.2018.”

Ld. State counsel submits that thus statement of the victim under Section 164 Cr.PC and her deposition above goes to show that the petitioner was named, and serious allegations were made against him also that mentioned his participation in the commission of aforementioned offences.

I have heard ld. Counsel for the parties.

From the facts as noticed above, the role and participation of the petitioner in the crime has been clearly described by the victim.

Besides the facts even the legal position in cases such as the present one is well established. There is no doubt that Hon’ble Supreme Court in the case of **Hardeep Singh v State of Punjab and others, Law Finder Doc Id # 514451** has held that power under Section 319 Cr.PC is discretionary and ought to be used sparingly, however, the Hon’ble Apex Court has gone

on to hold that this power under Section 319 Cr.PC can be used when compelling reasons exist for taking cognizance against the person against whom action has not been taken. In this regard, the following observations and guidelines issued by the Hon'ble Supreme Court in **Hardeep Singh's** case (supra) are apposite: -

“110. We accordingly sum up our conclusions as follows :

Question Nos. 1 & III

Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND

Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused. Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column

2 of the charge-sheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No. II

Q.II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination, or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. IV

Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for

summoning the accused (original and subsequent) has to be different.

Question No. V

Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been charge sheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh”.

In the present case, clear allegations of involvement of the petitioner in the commission and facilitation of the crime have been made, which cannot be ignored. Accordingly, I find no error in the impugned order.

Petition stands dismissed.

However, nothing stated above shall be taken as an expression of opinion on the merits of the case.

04.08.2023.
Joshi

(Nidhi Gupta)
Judge