

In the High Court of Punjab and Haryana at Chandigarh

113

CRR-614 of 2023

Date of Decision: 16.03.2023

Asha

---Petitioner

versus

State of Haryana and others

---Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Mohit Nehra, Advocate
for the petitioner

Ms. Dimple Jain, AAG, Haryana

JAGMOHAN BANSAL, J. (ORAL)

The petitioner through the instant revision petition is seeking setting aside of order dated 20.10.2022 whereby Additional Sessions Judge, Bhiwani has dismissed application of the petitioner under Section 319 Cr.P.C. for summoning respondents No. 2 and 3 as additional accused.

The brief facts of the case are that prosecutrix lodged FIR against four persons namely Bajrang, Naveen, Kuldeep and Nishu @ Sonu. The police conducted the investigation and thereafter filed its report under Section 173 Cr.P.C. The police during the course of investigation did not find any substance in the allegations of the prosecutrix qua Kuldeep and Nishu @ Sonu. On the basis of police

report, trial court framed charges against Bajrang and Naveen. The statement of prosecutrix came to be recorded before trial court wherein she made allegations against respondents No. 2 and 3 herein. On the basis of statement of prosecutrix, the public prosecutor moved an application under Section 319 Cr.P.C. seeking summoning of respondents No. 2 and 3 as additional accused. The application of the prosecutrix through public prosecutor came up for consideration before Additional Sessions Judge, Bhiwani, who vide impugned order dated 20.10.2022 has dismissed application of the prosecutrix.

Learned counsel for the petitioner inter alia contends that there are specific allegations against the respondents herein still trial court has mechanically dismissed application of the petitioner. The police has not carried out investigation in free and fair manner and respondents herein have been wrongly exonerated.

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

The relevant extracts from impugned order dated 20.10.2022 read as:-

“8. So far as the instant case is concerned, FIR was registered on the basis of Ex. P8, wherein only allegation against proposed accused are that co-accuse Bajrang blackmailed prosecutrix to develop physical relations with proposed accused against her wishes.

9. Statement of prosecutrix under section 164 Cr.P.C. (Ex.P9) was recorded on 25.10.2021,

wherein name of proposed accused has not been mentioned and prosecutrix has mentioned in Ex.P9 that there was a boy namely Bajrang and she was having speaking terms with him and he committed wrong act with her at her house. He had called his Friends and made attempt to commit wrong act with her and prepared her video and threatened to make that video viral and also threatened to kidnap her sister. After her marriage, they also came at the house of her in-laws. On 15 10.2021, Bajrang entered in her house and his friend Naveen was standing outside. Grandfather of her husband also saw them and on the asking of grandfather, her husband wake up and he chased them and now they were threatening to kidnap her sister-in-law and she want to take appropriate action against them.

10. So, in Ex.P9, prosecutrix has not levelled any allegations about alleged offence of rape against proposed accused. Moreover, zimni dated 09.11.2021, pertaining to investigation conducted by SHO,PS- Women, Bhiwani reveals that SHO had also mentioned that proposed accused did not commit any wrong act with the prosecutrix.”

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. Thus, it would be unfair and unjustified to summon the respondents who do not even remotely seem to be connected with alleged offence.

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

16.03.2023

paramjit

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No