

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
107+215**

**CRR-4052-2016 (O&M)
Date of decision: 14.09.2023**

Girraj Singh @ Dani

...Petitioner(s)

Vs.

State of Haryana & Another

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present: - Mr. Abhishek Goyal, Advocate for
Mr. Pardeep Goyal, Advocate
for the petitioner.

Mr. Brijesh Sharma, AAG Haryana.

NIDHI GUPTA, J.

CRM-38663-2023

This is an application under Section 482 Cr.PC. for placing on record copy of judgment (Annexure A1) passed by learned trial Court.

After going through the contents of the application, the same is allowed and Annexure A1 is taken on record.

MAIN CASE

Prayer in the present petition is for quashing of order dated 25.07.2016 passed by learned Additional Sessions Judge, Faridabad in case FIR No.123 dated 28.07.2015 under Sections 365, 342, 376, 34 and 354-A IPC registered at Police Station Chhainsa, Faridabad, titled as "State of Haryana Vs. Narender & Others", whereby, on an application made by the complainant/respondent No.2 herein under Section 319 Cr.P.C., the

petitioner has been summoned to face trial under Sections 365 and 343 IPC as an additional accused.

2. Learned counsel for the petitioner submits that FIR in the present case was registered on the basis of statement of victim/respondent No.2 herein. Facts as contained in the FIR are reproduced hereinbelow:-

“I am resident of the aforesaid address. I have three children out of which one is girl and two are boys. I do house hold work. My husband plies autorickshaw. On 02.06.2015 at about 9.30 a.m., I was going from my house to the Civil Hospital for taking medicine. One the way, Narender and Sunil met me. They said to me that they will leave me at the Hospital. I refused to them. At that very moment, Narender pressed an handkerchief on my mouth and thereafter I became unconscious. When I regained my consciousness I found myself locked in a room and my hands were tied and a piece of cloth was tied on my mouth. Narender committed rape on me and Sunil with bad intention touched my body with his hand. I was kept locked for three days. My husband searched me here and there. Then after three days, Bhagwan Singh made a call to me husband telling him that his wife is lying near the brick kiln at Bhawalpur road. Even at that time I was not fully conscious and my clothes were torn...”

3. Learned counsel submits that a perusal of the above FIR reveals that the petitioner has not even been named in the FIR. It is submitted that the petitioner has been implicated in the matter when the complainant improved upon her earlier version and named the petitioner in her statement recorded under Section 164 Cr.P.C. on 30.07.2015 (Annexure P3). It is submitted that even as per the said statement under section 164

Cr.P.C., the only allegation against the petitioner was that he had confined the complainant in his house. It is submitted that thereafter, the complainant in her testimony as PW1 dated 11.01.2016 (Annexure P4) further elaborated and improved on her earlier versions however, this time she has alleged that the petitioner had confined the complainant and her husband in their own house i.e. in the house of the complainant herself. It is submitted that accordingly there are material contradictions and improvements in all the three versions presented by the complainant.

4. Learned counsel for the petitioner further contends that it is important to bear in mind that as per the complainant, date of alleged incident is 02.06.2015, however, FIR has been registered after a delay of 56 days, on 28.07.2015.

5. Learned counsel submits that it is relevant that vide the impugned order co-accused Rekha had also been summoned along with the petitioner. It is submitted that said Rekha has undergone trial along with other accused Narendra and Sunil, and they have all been acquitted by the learned trial Court vide judgment dated 03.07.2017 (Annexure A1).

6. It is submitted that it is relevant to note that the learned trial Court while acquitting the co-accused had observed as follows:-

“32. The prosecutrix has tried to cover the delay by stating that they went to the house of Dani, sarpanch to report the matter. He confined them in his house and then they escaped from his house on 18.7.15 and went to Police Station Chhainsa. But even then, there is no explanation on the case file for the period from 5.6.15 to 18.7.15 and there is a silence of 43 days in reporting matter and it is the common evidence of the prosecutrix and her husband that Dani Sarpanch kept confined them for 5-6 days. Firstly, there was no occasion with both of

them to go to Dani, sarpanch as he was not above the law. The husband, as per his own version, approached the police regarding missing of his wife on 2.6.15, so, once his wife met him and she narrated the story to him regarding the rape by accused, then there was no occasion for the prosecutrix and her husband to go to the house of Dani, Sarpanch. They were well conversant with the criminal process, so they should have reported the matter directly to the police for heinous crime where dignity of a woman (prosecutrix) was completely vanished. But this act and conduct of both of them to approach Dani, Sarpanch in this serious offence while they were having the knowledge to approach police itself shows the false version of the prosecution. Once they escaped from the clutches of Dani, Sarpanch on 18.7.15 and reached at P.S. Chhainsa, then they should have produced some record. Here also, they are failed to produce record of P.S. Chhainsa for their attendance there on 18.7.15. The FIR was lodged on 28.7.2015, so again there is a delay of 10 more days in reporting. So, at every step, there is a delay in lodging the FIR....”

7. Learned counsel submits that from the above observations/findings of the learned trial Court it becomes clear that the petitioner has been roped into the present case by the complainant, only in an attempt to account for the huge delay of 56 days in lodging the present FIR. It is submitted that it is therefore clear that the petitioner has been wrongly summoned by the learned trial Court as additional accused.

8. It is also submitted that in the challan, the petitioner was found to be innocent during investigation and was not arrayed as accused. It is contended that it is only after her testimony as PW1, that the prosecutrix had moved an application under Section 319 Cr.P.C. upon which the petitioner was summoned on the ground that in the examination-in-chief, the prosecutrix had named the petitioner, even though the cross-examination of the prosecutrix was still pending.

9. Learned counsel vehemently contends that it has thus, become clear from the above said facts that the petitioner was found innocent during investigation; he has not been shown in column No.1 in the challan as accused; and no challan has been filed against the petitioner meaning thereby that he has not been named in the charge sheet. It is submitted that hence, the petitioner cannot be summoned as additional accused merely on the basis of statements made by the victim before the learned Judicial Magistrate, 1st Class, Faridabad under Section 164 Cr.P.C. and before the trial Court in examination-in-chief. In this respect learned counsel places reliance on **‘Sunita Chauhan Vs. State of Uttarakhand 2014 (7) RCR (Crl) 2885 (Uttarakhand)**.

10. Per contra, learned State Counsel opposes the prayer made on behalf of the petitioner and refers to findings recorded by learned Additional Sessions Judge, Faridabad in para 6 of the impugned order that *“..role of accused Rekha and Dani Sarpanch only for the purpose of kidnapping and for wrongfully confinement of prosecutrix for three days as discussed above. So at the most, the proposed accused Devi Sarpanch (sic) and Rekha are hereby summoned to face trial only under section 343 and 365 IPC whereas role of these two proposed accused as well as proposed accused Bhagwan Singh does not come more than this. So application s (sic) partly allowed. Let these two accused namely Devi Sarpanch and Rekha be summoned to face trial alongwith accused who are facing trial but only in Section 365 and 343 IPC....”*. Learned counsel for the State submits that in view of the above said clear findings of the learned trial court, which are

based on the categoric allegations made by the complainant, the present petition deserves to be dismissed.

11. I have heard learned counsel for the parties and gone through the case file as well as the record in detail.

12. Perusal of the order sheets reveals that service was complete/effectuated upon the complainant/respondent No.2 herein as far back as on 20.11.2018, however, there has been no representation on her behalf. Accordingly, the present matter being of the year 2016, is being heard and decided in the absence of the complainant.

13. It is a patent fact that as per the FIR the date of alleged incident is 02.06.2015. However, FIR has been registered on the statement of the complainant only on 28.07.2015. There is nothing whatsoever on record, or anything mentioned even in the impugned order, explaining the extraordinary and inordinate delay of 56 days.

14. Furthermore, bare perusal of the FIR (Annexure P-1) shows that the petitioner has not even been alluded to in the FIR. Complainant has firstly named the petitioner in her statement recorded under section 164 Cr.P.C. two days thereafter on dated 30.07.2015 (Annexure P3), as per which the allegation made against the petitioner is that he had detained the complainant, and her husband and her children in his house/house of the petitioner. Relevant part of the said statement of the complainant is reproduced hereinbelow:-

“...I knew that Narender has been committing rape with me. His brother-in-law Sunil tried to commit rape with me but he did not do so. During this period, Bhagwan Singh father of

Narender made a call to my husband and told that his wife is lying on the Bhawalpur road and he should pick up from there nearby. My husband from there took me to our house. Thereafter, I was taken to the house of Sarpanch. The Sarpanch asked us to enter into compromise but I refused. But he told us that we need not to go anywhere and he forcibly detained us in his house. He detained me, my husband and children for about 5-6 days. Thereafter Sarpanch released us. The Sarpanch gave beating to Narender and told him to marry me but he refused. Then, I agreed with Sarpanch and did not make any complaint. Thereafter, Narender sent several persons to kill us. When we asked him by calling him on phone he threatened that he would kill my husband. Then we made a complaint to Sarpanch but he scolded us. Thereafter, on 18th of this Month we went to Police Station Chhainsa. There again we were pressurized to enter into compromise. Sarpanch had also come there. Thereafter, we made a complaint in the court. Thereafter, the action was taken by the police at the police Station....”

(Emphasis supplied)

15. However, in contradiction of the above mentioned two versions contained in the FIR and statement under Section 164 Cr.P.C, in her testimony as PW1 dated 11.01.2016 (Annexure P4), the complainant has now alleged that the petitioner had detained the complainant and her family in the house of the complainant herself. Relevant extract of the said testimony of the complainant as PW1 dated 11.01.2016 (Annexure P4) is as follows: -

“...Thereafter, my husband reached at that place who took me to our house and after reaching there I disclosed whole incident to him. Thereafter, I and my husband had gone to Dani Sarpanch of village Mohna and disclosed him whole incident

and he had assured us that he will take action after summoning the accused and his family members. He had called accused Narender, Sunil and other family members. He had called accused Narender, Sunil and other family members and asked them as to whether they had committed any bad act with me and they had replied before him Yes. I and my husband was sent back by Sarpanch to our house and subsequently no action was taken by accused and rather I and my husband were confined in house for five days by Dani Sarpanch. Dani Sarpanch had also given me filthy abuses. As and when I used to go out to take water, he used to send boys after me to have a watch upon me. Sunil, Narender, Bhagwan Singh and Dani Sarpanch used to send muscle-mens (Gundas) to our house who used to give us beatings so that we do not take any action against them.

On 18.07.2015 I and my husband alongwith my minor children managed to escape at 2.00 am in night from our house and reached at PS Chhainsa and we met police official Sheela Devi who started giving threatenings to us and asked me to compromise the matter. Thereafter, we came back at citi park, Ballabgarh and I along-with my husband and children spent two days and nights in open space in Park. Narender and his father Bhagwan Singh and Sarpanch had sent Gundas to the Park to give us beatings...

(Emphasis supplied)

16. Needless to say, it is not clear as to how it is possible to detain a person in their own home.

17. From the above facts, it becomes undisputed and crystal clear that: a) the FIR has been registered after an inordinate and unexplained delay of 56 days; b) the petitioner has not been named in the FIR; c) that discrepant versions which have been continuously improved

have been given by the complainant of the alleged incident. Moreover, perusal of different versions narrated by the prosecutrix in the FIR, then in her statement under Section 164 Cr.P.C. and then in her testimony as PW1, reveals that the prosecutrix has not only continuously made improvements in her subsequent statements, but also her statements are full of contradictions, discrepancies, and have even been changed and are highly exaggerated.

18. It further appears that the petitioner has not been charge-sheeted, nor even challaned. Further, the cross-examination of the complainant was still pending when the petitioner was ordered to be summoned under Section 319 Cr.P.C. Moreover, admittedly, all the co-accused of the petitioner have been acquitted by the learned trial Court vide order dated 03.07.2017 (Annexure A1). As rightly noticed by the learned trial court in the said order, even if the fourth version presented by the complainant is to be believed that she along with her family had escaped the clutches of the petitioner on 18.07.2015, there is still unexplained delay of 10 days in lodging the FIR.

19. In view of above discussion, present petition is **allowed** and impugned order dated 25.07.2016 is set aside.

20. Pending application(s) if any also stand(s) disposed of.

14.09.2023
Sunena

(Nidhi Gupta)
Judge

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