

## IN THE HIGH COURT OF PUNJAB &amp; HARYANA AT CHANDIGARH

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CRR-2583-2018 (O&amp;M)

Date of order: 17.08.2023

Vikas &amp; Others

.....Petitioner(s)

Vs.

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Pratham Sethi, Advocate  
for the petitioners.

Mr. Brijesh Sharma, AAG Haryana.

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Nidhi Gupta, J.

Challenge in the present petition is to order dated 01.05.2018 whereby in an application under Section 319 Cr.P.C. filed by the complainant, the present petitioners have been summoned to face trial in case FIR No.27 dated 08.06.2017 under Section 4 of POCSO Act, 2012 and Sections 376(D) and 452 IPC registered at Women Police Station Hisar, District Hisar.

2. FIR in the present case was registered on the basis of statement of the victim and reads as follows:-

*“Statement of Annu d/o Kuldeep, caste Jat, r/o Surewala and aged 16 years, Phone No.99966-65810. Stated that I am resident of abovesaid address and student of 10<sup>th</sup> Class. We are two sister and brother. Today on 8.6.17 at about 3.00, I went to my stable for taking cow dung cakes. At that time, Pardeep alias Mona s/o Teluram, caste Jat, r/o Surewala was standing near our stable. On getting chance, Pardeep came inside our*

*stable and on finding me alone, he committed rape upon me forcibly. When I tried to raise alarm, he gagged my mouth. After few minutes, my father Kuldeep came at the spot and he rescued me from Pardeep but succeeded in running away. Earlier also, Pardeep was having evil eye upon me when I used to cross the street. At the time of fleeing away, his mobile fell down at the spot, which was taken by my father. Now I alongwith my parents have come to police station..."*

3. Learned counsel for the petitioners submits that the petitioners have not been named in the FIR, and that it was only subsequently that the complainant named the petitioners in her statement under Section 164 Cr.P.C (Annexure P2). It is submitted that even therein no allegation of rape was made against the petitioners. Relevant extract of the statement of the complainant/victim under Section 164 Cr.P.C. dated 09.06.2017 is reproduced hereinbelow:-

*"...Question 4: Tell what you want to say?*

*Answer: On 8.6.17 at 3:30 pm, I had gone to stable for bringing cow dung cakes. Then four boys were standing in the street. Their names are Pardeep s/o Telu Ram, Vikas s/o Jaibir, Ram Mehar s/o Balbir, Rahul s/o Ishwar. When I was taking cow dung cakes, then these four boys came inside and Pardeep s/o Telu Ram gagged my mouth and remaining three caught hold my arms and legs and put me down. Then Pardeep said at first I do wrong act with her. You three watch outside. When he was doing wrong act with me then my father came there alongwith a pair of ox for tethering them. On seeing them, three boys ran away from there and Pardeep also tried to ran away and after pushing my father, he ran away..."*

4. Learned counsel for the petitioners further submits that thereafter, investigation was carried out in the case, whereupon the

petitioners were found innocent. In the verification of investigation conducted by Deputy Superintendent of Police, it was reported that involvement of the petitioners namely, Vikas son of Jaibir, Ram Mehar son of Balbir and Rahul son of Ishwar, residents of Surewala has not been proved. No evidence against Vikas s/o Jaibir, Ram Mehar s/o Balbir and Rahul s/of Ishwar, residents of Surewala for making their arrest has come on the file and they were put in column No.2. Now nothing remains in the investigation. Therefore, challan dated 07.07.2017 (Annexure P3) was filed only against the main accused Pardeep. Accused Pardeep @ Mona was produced in the Court and thereafter, sent to District Jail Hisar.

5. Learned State counsel is unable to contradict the aforesaid facts and submits that now, the main accused Pardeep stands convicted by the learned trial Court.

6. I have heard learned counsel for the parties.

7. Notice was issued in the matter on 09.08.2018 whereby further proceedings qua the petitioners were stayed. Perusal of record of the case shows that admittedly the petitioners were not named by the complainant/victim in the FIR. In her statement under Section 164 Cr.P.C. (Annexure P2) dated 09.06.2017, some improvement was carried out by the complainant and the petitioners herein were named and it was alleged that they caught hold of her arms and legs and put her down. However, no allegation of rape was made against the petitioners even at that stage. In her deposition as PW2 dated 23.04.2018 (Annexure P4), the complainant has further embellished the original version and alleged that the petitioners caught hold of her hands and legs and took her inside *Chapper*. Be that as it

may, it is undisputed on record that upon investigation, the petitioners have been found innocent in the matter. Impugned order does not evince any cogent reasons as to why petitioners should face the hardship of trial.

8. In the facts and circumstances of the present case, reference may also be made to judgment of the Hon’ble Supreme Court in the case titled as **Sarabjit Singh v. State of Punjab, (2009) 16 SCC 46** : wherein it has been held that:

*“xxxx 21. An order under Section 319 of the Code, therefore, should not be passed only because the first informant or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be assigned by the court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. Such an evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction. For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned. Xxxx*

9. The abovementioned view has further been upheld by the Hon’ble Supreme Court in the case titled as **Hardeep Singh v. State of Punjab, (2014) 3 SCC 92**.

10. In view of the above said facts, the present petition is **allowed** and impugned order dated 01.05.2018 is set aside.

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

**17.08.2023**  
Sunena

**(Nidhi Gupta)**  
Judge

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No