

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR 1482/2023(O&M)

Date of decision: 03.07.2023.

Seema Rani

.....Petitioner

Vs.

State of Punjab and others

.....Respondents

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Kamal Narula, Advocate for the petitioner.

Nidhi Gupta, J.

CRM 26411/2023

Since there is delay of 66 days in filing the revision, aforesaid application has been filed seeking condonation of said delay.

For the reasons stated in the application, the same is allowed and delay in filing the revision petition is condoned.

Main Case.

Present revision petition has been filed seeking setting aside of order dated 31.3.2023 passed by Additional Sessions Judge, Fast Track Special Court, Fazilka (hereinafter referred to as 'the trial Court') whereby, the application moved by the petitioner u/s 319 Cr.PC to summon the private respondents No. 2 to 7 herein, as additional accused to face trial in case FIR No.243 dated 4.9.2021 registered under Sections 365/368/342/343 IPC, at PS Sadar Fazilka, has been dismissed.

It is inter alia, submitted by the ld. counsel for the petitioner that the aforesaid FIR was registered against Paramjit Singh and respondent no.2 herein. It is submitted that however, the private respondents No. 3 to 7 herein are also required to faced trial as they had played an active role and had pressurized the petitioner and her family members to withdraw the FIR and had openly threatened that they will again kidnap the petitioner in case the FIR is not withdrawn. It is submitted that as the petitioner and her family refused to withdraw the FIR therefore, again on 15.9.2021 the petitioner was kidnapped and raped by Paramjit whereafter Section 376 IPC was added vide DDR No.33 dated 21.10.2021. It is submitted that said DDR was not registered as per statement of the petitioner, and the prosecution agency has not added other persons as accused as reported by the petitioner. It is submitted that accordingly, the impugned order deserves to be set aside.

Heard ld. Counsel and perused the material on record.

In this regard, findings of the ld. trial court as contained in impugned order are relevant and are reproduced as follows:-

“3. Perusal of file shows that initially the FIR was registered against accused Paramjit Singh and Karamjit Singh on the statement of complainant on 04.09.2021 on the allegations that on 24.08.2021, accused Paramjit Singh @ Pamma in connivance with accused Karamjit Singh kidnapped the complainant and thereafter, accused Paramjit Singh @ Pamma allegedly committed rape with her against her wishes. However, during the course of investigation, accused Karamjit Singh was found innocent. Perusal of file shows that initially the FIR was registered for offences under section 365, 368, 342, 343 of IPC on recording statement of complainant on 04.09.2021

and at that time the complainant disclosed only about the occurrence dated 24.08.2021 stating therein that accused Paramjit Singh alongwith Karamjit Singh came to her house and took her to the house of maternal grand parents of Paramjit Singh at village Sethan Wala on the pretext of preparing her Aadhar card. She further stated that on 28.08.2021, her parents brought her back from village Sethan Wala. She categorically stated that nobody did any illegal act with her. However, thereafter, when the Victim was produced before the learned Illaqa Magistrate, she got her statement recorded under section 164 of Cr.P.C. on 21.10.2021, whereby she did not disclose anything about the occurrence dated 24.08.2021. Rather she narrated about the occurrence which allegedly took place in the month of September, 2021 stating therein that accused Paramjit Singh alongwith Karamjit Singh and one Mukhtiar Singh, Shambu Singh, Soola Bai and Chanan Singh took her to village Sethan Wala, where they allegedly performed her court marriage with accused Paramjit Singh against her wishes by pressurizing her. While stepping into the witness box as PW-1, the victim has disclosed about the occurrence which took place on 24.08.2021. However, as regards the second occurrence, the Victim has not disclosed any date. When she has narrated that the above said persons, proposed to be summoned by way of present application, took her to village Sethan Wala and helped Paramjit Singh to perform marriage with her forcibly. After going through the said facts, it is evident that all the statements suffered by the complainant at various occasions are discrepant qua material facts. In her statement recorded with police, resulting in registration of FIR EX.P1, she has not narrated any occurrence which took place in the month of September, 2021. She also did not name any person proposed to be summoned by way of present application.

In her statement recorded with the police, she has not narrated any date of occurrence when she was allegedly kidnapped by all the accused. She has also not attributed any specific role to the above said persons. It is not narrated as to how all the said persons came to her house and under what circumstances all of them kidnapped her and took her to village Sethan Wala. Similar is the fate of the statement suffered by Victim before this court as PW-1. Hon'ble Apex Court in **Hardeep Singh vs. State of Punjab (2014) 3 SCC 92** has observed as under :-

"98. Power under Section 319 Cr. P.C. is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

99. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused".

4. After going through the above said observation made by Hon'ble Apex Court and considering the testimony of complainant PW-1, I come to the conclusion that summoning of Karamjit Singh alias Mahla, Mukhtiar Singh, Chanan Singh, Shambu Singh, Kaushalya Bai and Soolla Bai as accused to face trial alongwith accused Paramjit Singh @ Pamma would be sheer abuse of process of law. Consequently, finding no merits in the present application under section 319 Cr.P.C., the same is hereby dismissed.”

From the facts as noticed above in the impugned order, it is clear that for the kidnapping/rape alleged to have occurred on 24.8.2021, FIR was recorded on the basis of statement of the complainant/petitioner on 4.9.2021. FIR was registered only against one Paramjit and respondent No. 2 herein. In the complaint recorded by the petitioner on 4.9.2021, she had categorically stated that no illegal act was done with her. However, thereafter, on 21.10.2021 in her statement under Section 164 Cr.PC, the petitioner made no mention of the alleged incident dated 24.8.2021. On the contrary, she stated that in September 2021, respondents No. 2 to 7 herein forcibly performed her court marriage with Paramjit Singh against her wishes. No specific date was given by the petitioner on which this marriage was performed, nor any other details were provided with regard to the said incident, or even with regard to the respondents No. 2 to 7 as to how, and in what manner was she kidnapped by them. Admittedly, the said persons are not even named in the FIR. Again, when stepping into the witness box as PW1, the petitioner has only mentioned the incident of 24.8.2021, and has not disclosed the date of the forcible marriage alleged to have taken place in September 2021.

Ld. counsel for the petitioner is unable to controvert or give any explanation whatsoever for the discrepancies as noticed above. Accordingly, I find no merit in the present revision petition. No ground is made out to interfere with the impugned order.

Revision petition accordingly, stands **dismissed**.

03.07.2023.
Joshi

(Nidhi Gupta)
Judge

Whether speaking/reasoned	Yes
Whether reportable	Yes/No