

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104

CRR-3402-2018

Date of Decision: 24.05.2023

Kailash Rani and Another

...Petitioners

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. P.P.S. Duggall, Advocate for the petitioner

Ms. Guramrit Kaur, DAG, Punjab

Mr. Rajinder Yadav, Advocate for

Mr. Salil Dev Singh Bali, Advocate for respondent Nos.2 to 4

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioners through instant petition are seeking setting aside of order dated 14.09.2018 whereby Sessions Judge, Ferozepur, in exercise of power conferred by Section 319 Cr.P.C. has summoned two persons, however, declined the prayer of prosecution to summon Sukhvinder Singh, Gurcharan Singh and Rinku Singh (respondents No.2 to 4).

2. The brief facts of the case are that petitioners lodged an FIR alleging that they are two sisters. One person namely Major Singh was having visiting terms with their family. On 20.08.2017, Major Singh on the pretext of marriage took away both the sisters on the motorcycle and dropped them near a canal. Prem Singh and Harbhajan Singh took both of them to a tubewell-bore and committed rape without their consent. FIR came to be registered under different Sections of IPC including Section

376-D of IPC. The police after completing investigation filed its report under Section 173 Cr.P.C. Charges came to be framed. The petitioner through public prosecutor filed an application under Section 319 Cr.P.C. seeking summoning of Major Singh, Rinku Singh, Sukhvinder Singh, Gurcharan Singh and Harbhajan Singh. The matter came up for consideration before Session Judge, Ferozepur who vide impugned order dated 14.09.2018 has concluded that there is no specific allegation against Sukhwinder Singh, Gurcharan Singh and Rinku Singh, thus, they cannot be summoned under Section 319 Cr.P.C. The Sessions Judge, Ferozepur, has summoned Major Singh and Harbhajan Singh in exercise of power conferred by Section 319 Cr.P.C. They have been summoned to face trial along with Prem Singh under Sections 363, 366-A, 366, 376-D of IPC and Section 6 of POCSO Act.

3. Learned counsel for the petitioner *inter alia* contends that police in the investigation did not find any fault on the part of the respondents. Accordingly, they were not named in the challan. The petitioners had made specific allegations against all the accused, however, Trial Court has wrongly dismissed application of the petitioner under Section 319 Cr.P.C qua respondents even though application qua two accused has been allowed. The Trial Court has committed serious mistake while not summoning the respondents.

4. Learned counsel for the respondents submits that Trial Court has not committed any mistake while passing the impugned order. No case

is made out against the respondents and petitioners want to implicate as many persons as possible.

5. Learned State counsel does not dispute the factual position and confirms that police in its investigation did not find any fault on the part of private respondents and they were not named in the challan.

6. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

7. The petitioners have invoked revisionary jurisdiction of this Court. The scope of interference while exercising power is very limited.

7.1 While adverting with Section 439 of old Criminal Procedure Code which in its present avatar is Section 401, a four judge bench of Hon'ble Supreme Court in ***D. Stephens v. Nosibolla 1951 SCC 184*** has held:

“12. The revisional jurisdiction conferred on the High Court under Section 439 of the Code of Criminal Procedure is not to be lightly exercised, when it is invoked by a private complainant against an order of acquittal, against which the Government has a right of appeal under Section 417. It could be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality, or the prevention of a gross miscarriage of justice. This jurisdiction is not ordinarily invoked or used merely because the lower court has taken a wrong view of the law or misappreciated the evidence on record.”

7.2 A constitution bench in ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92*** in reply to question, “What is the degree of satisfaction required for invoking the power under Section 319 Cr.P.C.?” has held:

“104. *In Palanisamy Gounder v. State (2005) 12 SCC 327, this Court deprecated the practice of invoking the power under Section 319 CrPC just to conduct a fishing inquiry, as in that case, the trial court exercised that power just to find out the real truth, though there was no valid ground to proceed against the person summoned by the court.*

105. Power under Section 319 CrPC is a discretionary and an extraordinary 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.

106. 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 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused.”

7.3 This Court while disposing of CRR-1777 of 2019 (Date of Decision 12.05.2023) involving identical issues has held:

“18. Hon’ble Supreme Court has time and again observed that criminal law should not be put into motion in a casual or mechanical manner Even simple notice from police or court causes mental stress and agony. Except few crooks, majority of population of the country avoid litigation and want to live a peaceful life. Conclusion of trial takes a quite long time and its pendency causes countless tribulation and sometimes long lasting adverse effects on the person summoned as well his family. Majority of people are striving for basic necessities of the life and as soon as one member of the family is embroiled in a criminal case, life of entire family is crippled. Conviction rate is well known but harassment during trial is not hidden from anyone.”

8. In the present case, complainant through public prosecutor filed an application under Section 319 Cr.P.C. to summon five accused namely, Major Singh, Sukhvinder Singh, Gurcharan Singh, Rinku Singh and Harbhajan Singh. The Trial Court after perusing the record has

summoned two accused, however, dismissed the application to summon respondent Nos.2 to 4. The relevant extracts of order dated 14.09.2018 read as under:-

“7. A conjoint reading of statement Ex.P1 made by the complainant (victim) before the police and the statements made by the complainant and her sister lead this Court to arrive at a conclusion that there are sufficient grounds to summon Major Singh and Harbhajan Singh as accused in this case. Major Singh took both the victims on his motor cycle on the pretext of solemnizing their marriage and left them with Prem Singh and Harbhajan Singh, who forcibly committed rape upon the victims without their consent.

8. As regards Sukhwinder Singh, Gurcharan Singh and Rinku are concerned, there are no specific allegations against them. The only allegation against them is that the offence of rape has been committed at their instance and in their connivance. There is nothing on record as to how they connived with Major Singh, Prem Singh and Harbhajan Singh. As such, no sufficient ground is made out to summon them and accordingly, application qua them is dismissed.”

9. From the perusal of FIR as well as impugned order, it is quite evident that there is allegation of commission of offence punishable under Section 376-D of IPC against Major Singh, Harbhajan Singh and Prem Singh. No offence is made out against Sukhvinder Singh, Gurcharan Singh and Rinku Singh i.e. private respondents.

10. Applying the principles laid down by Hon’ble Supreme Court while interpreting scope of power conferred by Section 319 to the facts of the present case, this Court finds that petitioner is attempting to implicate the private respondents in a mechanical manner. The Court below has not found substance in the allegations against the private respondents to summon them in present case. The Trial Court after considering evidence has recorded categoric findings which are just and right, warranting no interference of this Court.

11. In view of the above narrated facts, having regard to the findings recorded by Trial Court including accepted legal position, this Court is of the considered opinion that in the case at hand there is no infirmity or irregularity in the impugned order. Accordingly, this Court fully agrees with the finding recorded by Trial Court. The impugned judgment being speaking, based upon correct appreciation of facts, applicable law & judicial precedents and well-reasoned needs no interference of this Court.

Dismissed.

(JAGMOHAN BANSAL)
JUDGE

24.05.2023
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>