

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CRR-3835-2018 (O&M)

Date of order: 03.10.2023

Pardeep Kumar

.....Petitioner(s)

Vs.

State of Haryana & Another

.....Respondent(s)

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr.Abhimanyu Singh, Advocate
for the petitioner.

Mr. Brijesh Sharma, AAG Haryana.

Mr. Shokeen Singh Verma, Advocate
for respondent No.2.

Nidhi Gupta, J.CRM-47643-2022

Vide order dated 18.04.2022, this Court had directed the petitioner to place on record copy of final report under Section 173 Cr.P.C. and statement of the victim recorded under Section 164 Cr.P.C.

In compliance of said order, present application is filed seeking placing on record copy of challan dated 23.04.2018 and statement of the victim dated 11.03.2018 and 14.03.2018 as Annexure P3 and Annexure P4, respectively.

After going through the contents of the application, the same is allowed and challan dated 23.04.2018 and statement of the victim dated 11.03.2018 and 14.03.2018, are taken on record.

MAIN CASE

The petitioner before this Court is the father of the prosecutrix. Challenge in the present petition is to the order dated 09.10.2018 passed by learned Additional Sessions Judge, Bhiwani in case titled as “State Vs. Pardeep Kumar” arising out of FIR No.120 dated 11.03.2018 registered under Sections 363, 366-A, 376-D IPC and Section 6 of POCSO Act, 2012 at Police Station Tosham, District Bhiwani, whereby application filed by the prosecution under Section 319 Cr.P.C. for summoning of Ajay/respondent No.2 herein, as additional accused has been dismissed.

2. Brief facts of the case are that FIR in the present case was registered on the basis of statement of prosecutrix, and reads as follows: –

“To, SHO, Police Station Tosham. Sir it is submitted that I am Preeti daughter of Pardeep Kumar caste Nai resident of Dulheri. I am about 15 years old and is student of 9th Class and is studying in Government Senior Secondary School. Yesterday on 10.03.2018 in the night at about 11:00 p.m. when I went for nature's call outside my house then three boys came to me and they gagged my mouth and taken away in car and from there had taken away to the fields and had committed rape upon me turn by turn. Thereafter, I felt unconscious. In the morning when I become conscious then I found myself at Government Senior Secondary School, Dulheri. Car was of light black colour, out of three boys one is known to me who is Ajay resident of Dulheri and two more boys which I do not know but if they will come in the front of me, then I can recognize them and I disclosed the entire incident to my family members. Today I am present in police station with my father and maternal Aunt

(Bua) Neelam wife of Ramesh. I had recorded my statement. Strict legal action be taken against them”.

3. Learned counsel for the petitioner submits that in view of the fact that respondent No.2 has been specifically named by the prosecutrix in her statement before the police/FIR, therefore, learned trial Court was in patent error in dismissing the application of the prosecution under Section 319 Cr.P.C. seeking summoning of respondent No.2. Learned counsel submits that respondent No.2 has also been named by the prosecutrix in her statement under Section 164 Cr.P.C.; and in her deposition as PW8 dated 04.07.2018 (Annexure P1), the prosecutrix has attributed specific role to respondent No.2 to the effect that he had prepared a video of the prosecutrix while she was being raped by the other co-accused. It is vehemently contended that therefore, in view of these categorical statements on part of the prosecutrix, respondent No.2 ought to undergo trial.

4. Learned counsel further submits that the prosecutrix has named three persons as accused namely Naveen, Pardeep and Ajay/respondent No.2 herein. However, only Pardeep and Naveen have been arrested and are facing trial whereas respondent No.2 has been wrongly exonerated in the challan filed by the Investigating Agency, notwithstanding the fact that respondent No.2 had also been accused of kidnapping the prosecutrix along with the other two co-accused and therefore, he also ought to have been summoned to face trial. Learned counsel further submits that perusal of deposition of the prosecutrix as PW8/Annexure P1 clearly reveals that respondent No.2 had actively

participated in the commission of heinous offence against the minor prosecutrix, however, this material evidence has been overlooked by the learned trial Court while passing the impugned order. It is submitted that it was incumbent upon the learned trial Court to appreciate that respondent No.2 has been named by the prosecutrix in the FIR; in the statement under Section 164 Cr.P.C.; and in her deposition as PW8, and therefore prima facie offence is made out against respondent No.2. It is submitted that it is thus, evident from the facts submitted above that application under Section 319 Cr.P.C. could not have been dismissed as there is sufficient incriminating material against respondent No.2.

5. Learned counsel for the petitioner relies upon judgment of Hon'ble Supreme Court in **"Sandeep Kumar Vs. The State of Haryana & Another"** Law Finder Doc ID # 2275534, to submit that Section 319 Cr.P.C. leaves it to the judicial discretion of the Court, where trial is proceeding to summon person as accused (who is so far not an accused in trial), if evidence has appeared before Court that such person has committed offence for which he should be tried together with other accused, it was absolutely necessary for trial court to have summoned the proposed accused.

6. No other argument is made on behalf of the petitioner.

7. I have heard learned counsel for the petitioner.

8. From the above submissions made on behalf of the petitioner it emerges that two main allegations have been made against the proposed accused – that he had kidnapped the prosecutrix along with the

other co-accused; and that he had made a video of the prosecutrix as she was being raped by the other co-accused.

9. Perusal of record of the case shows that on afore-referred statement dated 11.03.2018 made by the prosecutrix (Annexure P4), present FIR was registered on 11.3.2018 itself. In the above said statement, the prosecutrix had named the proposed accused Ajay/respondent No.2 herein, "and two more boys". Thereafter, as has been recorded in the final report under Section 173 Cr.P.C. dated 23.04.2018 (Annexure P3), that the victim was produced before learned Magistrate, Tosham but she did not make any statement before the learned Magistrate; thereafter, the victim was produced before District Child Welfare, Bhiwani but she did not make any statement there also; thereafter, the prosecutrix was taken to Government Hospital, Bhiwani for conducting medico-legal examination, however, she refused for the same.

10. On 13.03.2018, the prosecutrix was again produced before Child Welfare Committee, wherein she stated as follows:-

"On 10th, I went with Naveen and there I went with him in field and since I was having relation with him therefore, I made physicals relations with him and I had made physical relation with him only one time and for this our consent was there. The car of Pardeep was used and we went along with him and he returned back after leaving us".

11. On 14.03.2018, medico-legal examination of the victim was conducted; and her statement under Section 164 Cr.P.C. (Annexure P4) was recorded wherein she stated as follows:-

"On 10.03.2018 at nighttime about 11:00 pm we meaning thereby I and Naveen had met and whatever has happened

that was happened with my consent. I had made physical relation with Naveen with my own consent and had committed wrong. Pardeep is not having any fault and Ajay is also not having any fault. Now I want to go with my family member."

12. Thereafter, investigation of the case was carried out whereupon accused Pardeep and Naveen were arrested on the ground that *"Since accused Pardeep has helped the accused Naveen for rape with minor girl XXXX while leaving them in field by using his own car, therefore, investigation in the present case has been completed and till date sufficient material has been found against accused Pardeep and Naveen above said on the basis of investigation as well as statement of witnesses therefore, challan is hereby prepared."* Thereafter, co-accused Naveen and Pardeep were sent to face trial.

13. Thus, from the above facts, it is amply clear that the prosecutrix in her statement dated 13.03.2018 made before the Child Welfare Committee, as also in her statement dated 14.03.2018 made under Section 164 Cr.P.C. (Annexure P4), has categorically stated that the proposed accused namely *"...Ajay is also not having any fault."*

14. Moreover, in this regard the following findings of the learned Additional Sessions Judge, Bhiwani in impugned order dated 09.10.2018 are relevant and read as follows:-

"13. At this stage, the statement of the victim, which was given by her during the counseling when she was produced before CWC, Bhiwani and DCPO, Bhiwani needs, as well, to be looked at. The victim was counseled by Child Welfare Committee, Bhiwani on 13.03.2018 and during counseling, before the counselor, the victim suffered statement in the same vein when she maintained that 'on 10th, she went away with Naveen and

stayed with him in his agricultural fields; sexual relations were established between them once and it was with their mutual consent; they had gone in the car of Pardeep with Pardeep and Pardeep had returned after dropping them in the field; she had no concern whatsoever with any other third person, besides Naveen and Pardeep'. Thereafter, the victim was also counseled by Member, District Child Protection Unit, Bhiwani and on the basis of counseling of victim, counseling report was prepared. In the record, it was mentioned that, as per victim, she did not know any boy by the name of Vikas and she had given his name wrongly due to fear of her parents and she had established physical relations with Naveen of her free will. In both the statements, as noticed above, the proposed accused has been exonerated by the victim of any crime against her person".

15. Findings of the learned trial Court recorded in Para 15 of the impugned order are also relevant and are reproduced hereinbelow:-

"15. It is relevant to mention here that in application addressed to SHO, Tosham, which was moved by the father of victim on 9.04.2018, it bears out that he mentioned in categorical terms that when his daughter gave application on 11.03.2018 regarding incident, she was quite confused so she could not disclose the true facts completely but now she had apprised them of the fact that she had been enticed away by Naveen son of Hawa Singh Saini and Pardeep son of Rajender Saini residents of village Dulheri in the night of 10.03.2018 in the car of Pardeep and in the fields, Naveen had deflowered her in which crime Pardeep had been an accomplice, as such, legal action be taken against Naveen and Pardeep. So, as is evident, in the statement of father of victim given by virtue of written application dated 9.04.2018, the proposed accused has not been named".

16. Furthermore, as regards the allegation by the prosecutrix in her deposition as PW8 that the proposed accused made a video while the prosecutrix was being raped by accused Naveen, admittedly, no such allegation has been made by the prosecutrix either in her statement in the FIR or in her statement under Section 164 Cr.P.C. It is therefore, clear that she has subsequently made material improvements to her version. Moreover, admittedly, no video as alleged to have been prepared by the proposed accused has been brought on record by the prosecution.

17. Accordingly, in view of above discussion, and the fact that the above said findings as recorded by the learned trial court remain un-refuted and uncontroverted by the learned counsel for the petitioner, I find no ground is made out to interfere in the impugned order. Present petition stands **dismissed**.

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

03.10.2023

Sunena

(Nidhi Gupta)

Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No