

IN THE HIGH COURT OF PUNJAB AND HARYANA,
AT CHANDIGARH

CRR-1686-2022 (O&M)
Date of Decision: 20.01.2023

Sudesh Devi and another

..... Petitioners

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present: Mr. Jasmer Singh Rozera, Advocate
for the petitioners.

Ms. Ambika Sood, Additional A.G. Haryana.

Amarjot Bhatti. J.

1. Sudesh Devi and Poonam have filed this revision against order dated 9.5.2022 vide which they have been summoned under Section 319 Cr.P.C. to face trial along with other accused in FIR No.258 dated 24.10.2021 under Section 323, 452 read with Section 34-B, IPC, registered at Police Station Pillukhera District Jind.

2. As per the facts of the case, the challan was presented against Azad in the aforesaid FIR in which he was charge-sheeted and the case was fixed for prosecution evidence. The statement of the prosecutrix was recorded in part when the prosecution filed application under Section 319 Cr.P.C. to initiate proceedings against Smt.Sudesh Devi and Smt.Poonam to face trial as additional accused. The said application is Annexure P-3. Learned trial court after hearing the arguments allowed the application under Section 319 Cr.P.C. vide detailed order dated 09.05.2022. Feeling aggrieved by this order, the present revision has been filed.

3. Learned counsel for the revisionists argued that the facts of the

case and the statement of prosecutrix as PW-1 were not rightly appreciated. Learned counsel for the revisionists referred to the statement of prosecutrix recorded under Section 164 Cr.P.C., Annexure P-2 in which both the revisionists were not specifically named. In fact, the present revisionists are falsely named by the prosecutrix when her statement was recorded as PW-1. The said statement recorded in the Court is Annexure P-4. It is argued that for the summoning of additional accused on application under Section 319 Cr.P.C., the trial court was to see convincing evidence on record. The police during investigation found both the revisionists innocent and they were not challaned. In the revision itself, the learned counsel for the revisionists has relied upon an authority of Hon'ble Supreme Court **2017 (3) RCR Criminal, page 374** case titled Brijendra Singh and others Vs. State of Rajasthan, where the principles were laid down to summon the additional accused on application under Section 319 Cr.P.C. In fact, the prosecutrix has given an improved version to falsely implicate both the revisionists. It is prayed that the impugned order dated 09.05.2022 passed by learned Additional Sessions Judge, Fast Track, Special Court, POCSO, Jind may kindly be set aside by accepting the present revision.

4. On the other hand, the learned counsel representing the State argued that both the revisionists were specifically named by the prosecutrix right from the beginning even then they were not challaned. Statement of prosecutrix was being recorded as PW-1 on oath where she again confirmed that her previous version and thereafter, the application was filed under Section 319 Cr.P.C. to summon both the revisionists as accused. There are specific allegations against both the revisionists. Learned trial Court has rightly considered the facts of the case and the evidence on record and they

were rightly summoned vide impugned order dated 09.05.2022. The revision filed by the revisionists is without merits and the same may kindly be dismissed.

5. I have considered the arguments and have gone through the record carefully. As per the brief facts of the present case, the prosecutrix gave her written complaint to SHO, Police Station Pillukhera that on 22.10.2021 at about 11:00 A.M, she was alone in the house. Her mother and brother had gone out. Suddenly, Azad came inside the house and by using force tried to do the wrongful act with her. She requested him to go away, otherwise, she would raise alarm. In the meantime, Poonam and Sudesh Devi – Bhabhis/ sisters-in-law of Azad reached there. They also tried to help him but she resisted. The Bhabhis of Azad caught hold of her and gave beating to her. She rescued herself and ran outside in the street where she was again beaten up by both the revisionists. Azad wrongly commented about her to his brother because of which he was depressed and did not return home for the whole of the night. On this complaint, the action was taken.

The statement of the prosecutrix was recorded under Section 164 Cr.P.C. before the Magistrate and the present FIR was registered. After completion of investigation, challan was presented in the Court. It is a matter of record that challan was presented only against accused Azad whereas, the present revisionists Sudesh Devi and Poonam were not challaned in this case. After the framing of charge and partly recording the statement of prosecutrix as PW-1, application was moved under Section 319 Cr.P.C. to summon the present revisionists. After hearing arguments and appreciating the facts of the case and the evidence on record, learned trial

Court allowed the application under Section 319 Cr.P.C. vide detailed order dated 09.05.2022 regarding which the present revision has been preferred.

6. It is a settled preposition that for summoning of accused under Section 319 Cr.P.C., there should be higher degree of satisfaction required as compared to the framing of charge against the accused. It is an extraordinary and discretionary power for summoning of accused under Section 319 Cr.P.C. and it should be exercised sparingly. Keeping in mind these principles, I have considered the facts of the case and documents on record. The contents of FIR Annexure P-1 clearly indicate that both Sudesh Devi and Poonam were specifically named by the prosecutrix right from the beginning and specific role was attributed to them. As per the contents of FIR, when both the revisionists reached the house of the prosecutrix, they tried to support Azad and when she resisted, they caught hold of prosecutrix and gave beating to her. She ran outside in the street where she was again thrashed by both the revisionists. I have also gone through the statement of prosecutrix recorded under Section 164 Cr.P.C. Annexure P-2, where she has referred both the revisionists as 'Bhabhis' of the main accused Azad. After framing of charge, again the statement of prosecutrix was recorded as PW-1, where she again named both the revisionists as accused for beating her by entering her house as well as beating her outside in the street. The perusal of the impugned order dated 09.05.2022 further shows that regarding beating given to the prosecutrix, she was medically examined on 23.10.2021 and the detailed injuries as depicted in the MLR are mentioned in para no. 3 of the impugned order. The prosecutrix has not levelled any allegation of beating against the main accused Azad. The beatings were allegedly given by both the revisionists which are supported by the MLR of

prosecutrix.

7. Considering the aforesaid facts, according to me there is sufficient material on the record to summon both the revisionists as accused to face trial along with the main accused Azad. The order dated 09.05.2022 passed by learned Additional Sessions Judge, Fast Track, Special Court, POCSO, Jind does not suffer from any illegality or irregularity, therefore, the same is accordingly, upheld and the revision preferred by both the revisionists is declined.

20.01.2023
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(AMARJOT BHATTI)
JUDGE

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