

**THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-36722-2019

Reserved on: 03.07.2023

Pronounced on: 06.07.2023

Santosh

....Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Tarun Kumar Sharma, Advocate, for the petitioner.

Ms. Ankita Ahuja, AAG, Haryana.

Mr. Rajat Verma, Advocate, for
Mr. Vivek Kathuria, Advocate,
for respondent Nos. 2 and 3.

HARNARESH SINGH GILL, J.

Challenge in the present petition is to the order dated 17.05.2019 (Annexure P.4), passed by the learned Sessions Judge, Rohtak, whereby the revision petition filed by the petitioner against the order dated 11.12.2018 (Annexure P.2), was dismissed and the said order was upheld.

2. Learned counsel appearing for the petitioner would vehemently contend that once the petitioner (complainant) had got recorded her statement, on the basis whereof the FIR was registered, regarding the complicity of accused Nos. 2 and 3- Vikram and Raj Kumar, in the crime, there was no occasion for the Courts below to ignore the same, more so when the complainant had reiterated her version in the examination-in-chief in the Court.

3. While drawing the attention of this Court towards the contents of the FIR, learned counsel for the petitioner would submit that in the FIR itself, the petitioner-complainant had clearly stated that it was respondent Nos. 2 and 3, at whose instigation, the other accused – Sneh Lata and Mona had given her beatings, caused injuries and uttered caste related remarks and that the same version was reiterated by the petitioner-complainant in her examination-in-Chief, while appearing in Court as PW3. It is further submitted that the Courts have ample power under Section 319 Cr.P.C., to cause the summoning of any person, even if such person was not arraigned as an accused in the FIR. Thus, it is contended that both the Courts below have gravely erred in dismissing the application qua respondent Nos. 2 and 3. In support of his assertions, learned counsel for the petitioner relies upon the judgment of the Hon'ble Apex Court in Jitendra Nath Mishra Vs. State of U.P. & Anr., 2023 Live Law (SC) 480.

4. On the other hand, learned State counsel opposes the arguments raised by the counsel for the petitioner. She would contend that apart from mere bald assertions of alleged criminal intimidation, no other substantial material is in record, which could justify the summoning of respondent Nos. 2 and 3. It is further submitted that as there were no allegations, except such bald statement, against respondent Nos. 2 and 3, the police did not register any FIR against the said persons; that the FIR was registered on 28.07.2015 and no foul play, had been alleged by the petitioner-complainant all these years.

5. Learned counsel for respondent Nos. 2 and 3, contends that both the Courts below have passed the reasoned orders and dismissed the application under Section 319 Cr.P.C. against the said respondents. It is further submitted that both the Courts below have caused the summoning of one Mona, but rejected the prayer of the petitioner qua respondent Nos. 2 and 3, by holding that there was no incriminating material against the said respondents on record. It is further submitted that mere reiteration of the version contained in the FIR, in the examination-in-chief in the Court, does not amount to ipso-facto summoning of the persons sought to be summoned and for that more than a prima-facie case, which could entail the conviction of the accused, ought to be made out.

6. I have heard the learned counsel for the parties and have also gone through the case file.

7. There is no denying the fact that Section 319 Cr.P.C. envisages summoning of any person as an accused, if it appears from the evidence that such person has committed a crime, for which, he ought to be tried with the accused, who is/are already facing the trial. However, each case has to be decided on its own facts and the Courts, on the basis of the material and evidence on record, have to find out if the person sought to be summoned, has actually committed the crime.

8. In the instant case, when this Court ponders over the contents of the FIR, it emerges that the petitioner-complainant had got recorded therein that Vikram and Raj Kumar, caste Jaat, used to instigate other accused Sneha Lata and Mona, to

beat the complainant and her children and assure them that said respondents would save them from the clutches of any police/legal action. There is no allegation of either giving of any beatings or causing any injury, by said Vikram and Raj Kumar to the complainant or her children. Similar is the version recorded in the examination-in-chief of the petitioner-complainant.

9. It is settled law that the Court, while exercising the power under Section 319 Cr.P.C., must not act mechanically merely on the ground that some evidence has come on record implicating the person sought to be summoned. There must be a satisfaction preceding the order that such evidence, if goes un rebutted, would lead to his conviction.

10. In the present case, except the bald statement of the petitioner-complainant, there is no material on record, which could satisfy the conscience of the Court, to cause the summoning of respondent Nos. 2 and 3. The pleas taken by the petitioner-complainant, have rightly been rejected by the Courts below, qua respondent Nos. 2 and 3. The judgment in Jitendra Nath Mishra's case (supra) relied upon by the learned counsel for the petitioner, rather supports the view taken by the Courts below.

11. In view of the above, finding no merit in the present petition, the same is hereby dismissed.

06.07.2023
ds

(HARNARESH SINGH GILL)
JUDGE

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