

Neutral Citation No.2023:PHHC:139823

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

Criminal Revision No.2451 of 2023

Date of decision: 2.11.2023

Reserved on: 20.10.2023

Rxxx

.... Petitioner

Versus

Kamaljit @ Laddi and ors.

.... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present : Ms. Harnaaz Kaur Hundal, Advocate for the petitioner.

MANISHA BATRA, J.

1. The instant revision petition has been filed by the petitioner RXXX- (name withheld) under Sections 397 and 401 of the Code of Criminal Procedure for setting aside of order dated 04.02.2023 as passed by the Learned Additional Sessions Judge Cum Fast Track Court (POCSO), Jalandhar, whereby the application filed under Section 319 of Cr.P.C. by the petitioner for summoning one Rajji as additional accused has been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that FIR No.57 dated 15.04.2022 had been registered under Sections 363, 366-A and Section 376-DA of IPC read with section 4 of POCSO Act, 2012 at Police Station Div. No.2, Jalandhar on the basis of statement of the present petitioner (name withheld) alleging that on 13.04.2022, she was going towards her home from her school after taking examination, when accused Laddi and Deepak

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@ Deepu who were her uncles had intercepted her. They had come on a bike and while representing that her Bua (paternal aunt) had called her, they had made her sit on their bike and then took her somewhere where she was subjected to rape. The accused Deepak, Kamaljit and Pawan Kumar were apprehended and formally arrested in the case. After completion of investigation, challan was presented against them and presently they are facing trial. During the pendency of the trial, the statement of the present petitioner i.e. prosecutrix was recorded and thereafter application (Annexure P-2) had been filed by her through the State for summoning her paternal aunt Rajji as an additional accused by alleging that she had connived with the main accused and had threatened the petitioner to kill her sister and eliminate her entire family. The said application has been dismissed by learned trial Court on 04.02.2023.

3. Feeling aggrieved against the order dated 04.02.2023 passed by the Learned trial Court, the petitioner has filed this petition.

4. Learned counsel for the petitioner submitted that the learned Trial Court has erred in law by dismissing the application filed by the petitioner. There was overwhelming evidence on record in the form of testimony of the petitioner to show that the proposed accused had participated in the occurrence and in fact it was at her instance that the co-accused had committed rape upon the victim. The statement of the petitioner as recorded before the Court also proved that she had extended threat to kill the family members of the petitioner if she disclosed about the incident of subjecting her to rape, to anybody which too proved her complicity in the crime. Therefore, it was argued that the impugned order was liable to be set aside, the revision petition deserved to be accepted and the proposed accused was

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liable to be arraigned and summoned to face trial along with the accused already arraigned.

5. Learned counsel for the petitioner had been heard at considerable length and the material placed on record has been perused.

6. Section 319 of Cr.P.C. empowers the Court to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with other accused. The principle of law with reference to exercise of jurisdiction under this Section has been well settled by the Constitution Bench of Hon'ble Supreme Court in a celebrated pronouncement cited as ***Hardeep Singh and others Vs. State of Punjab and others, (2014) 3 SCC 92*** wherein it was observed that the power under Section 319 Cr.P.C. is discretionary and an extraordinary power. It has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. 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 material placed before the Court that such power should be exercised and not in a casual and cavalier manner. It was also observed 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 strong evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as has been established 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

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such satisfaction, the Court should refrain from exercising power under Section 319 of Cr.P.C.

7. Reference can also have made to a recent pronouncement of Hon'ble Supreme Court cited as ***Sagar Vs. State of UP and another, (2022) 6 SCC 389*** wherein the Apex Court observed as under:-

“ The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as notice above 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....”

8. It is also well settled proposition of law that an order under Section 319 of the Cr.P.C. should not be passed only because the first informant or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be assigned by the Court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. The evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction and for this purpose, the Courts are required to apply stringent tests one of such tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

9. On translating the abovesaid principles of law with their application to the peculiar facts of the instant case, this Court gathers impression that the learned

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trial Court committed no irregularity or illegality in dismissing the application as filed by the petitioner. The proposed accused was not named in the FIR. Further, the petitioner in her statement as recorded under Section 164 of Cr.P.C. on 16.04.2022 made before the Judicial Magistrate had also not made any mention of the name of the proposed accused or any part played by her and it was simply alleged by her that she had been made to sit in a broad day light on a bike by the accused Laddi and Pannu on 13.04.2022 on the representation that her paternal aunt was calling her. The proposed accused was named for the first time by the petitioner during the course of recording her sworn deposition before the learned trial Court. Copy of her statement has been produced on record as Annexure P-1 which shows that she had initially stated that accused Laddi and Pannu who were uncles had taken her to some room where they subjected her to sexual intercourse and they had done so in connivance with Deepak @ Deepu, her real uncle who had also ravished her. She is further shown to have stated that the proposed accused Rajji who was sister of accused Deepak had connived with them and wrong act with her was committed at the instance of accused Rajji who also visited her house and extended threats to her family members and herself to face dire consequences if she made any statement in the Court. The learned trial Court had observed that the statement so made by the petitioner was an improved version that was not reliable.

10. After going through the examination in chief/statement of the petitioner as recorded before the trial Court, it transpires that the paternal aunt of the petitioner who is sought to be arraigned as an accused by her was neither named in the FIR or at the time when the statements of petitioner/prosecutrix was

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recorded under Section 164 of Cr.P.C. before the Judicial Magistrate. Undoubtedly, there is no bar to act upon the statement of a witness as recorded in the Court for proceeding against any person. However, simultaneously the power to summon any one cannot be exercised mechanically. The criminal law cannot be set into motion at the whims and caprice of anyone. The petitioner by making statement against the proposed accused who is none else than her bua (paternal aunt) has tried to implicate her by alleging that it was on her instigation and with her connivance that the accused already facing trial had kidnapped/abducted and raped her. However, only on the basis of her mere simple statement that proposed accused had connived with accused Deepak and wrong acts were done with the petitioner at her instance, it cannot be stated that the proposed accused was involved in the crime. The petitioner while appearing as PW-2 before learned trial Court did not explain as to how she had come to know that the proposed accused had connived with accused Deepak or she was kidnapped and ravished at the instance of the proposed accused. Neither any source as to her having information about this fact had been disclosed by the petitioner nor it was explained as to on which particular date and month and also from whom she came to know that wrong act was done at the instance of the proposed accused or what particular act and conduct of the proposed accused made her believe so?

11. The evidence for the purpose of arriving at a finding that there was a complicity of the proposed accused in the crime, must be more than prima facie evidence with if goes un rebutted would lead to conviction but it must be not more than prima facie evidence as recorded at the time framing of charge even qua threatening. On the basis of the statement as recorded by the petitioner in the

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Court, no finding can be given that there was even any prima facie evidence which was stronger than mere probability of complicity of the proposed accused in the crime of kidnapped/abduction of the petitioner and subjecting her to rape/act of aggravative penetrative sexual assault. However, obviously there is absence of such satisfaction in the evidence led by the petitioner. As such in my considered opinion, summoning of the proposed accused would be far fetched and she cannot be subjected to trial on the basis of statement as recorded by the complainant which is not beyond suspicion qua complicity of the proposed accused. Accordingly, there is no hesitation to hold that there was no scope for the trial Court under Section 319 Cr.P.C. to form any opinion as to the guilt of the proposed accused and in the absence of such satisfaction, the learned Trial Court rightly refrained itself from exercising power under Section 319 Cr.P.C. as the satisfaction desirable for summoning the proposed accused under Section 319 Cr.P.C. was not found on record. As such no irregularity or illegality can be stated to have been committed by the learned trial Court while passing the impugned order and dismissing the application of the petitioner which was passed after analyzing the facts of the case in proper perspective. This Court therefore has no reason to interfere with the findings as given by learned trial Court.

12. Accordingly, the petition is dismissed.

02.11.2023
monika

(MANISHA BATRA)
JUDGE

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