

2023:PHHC:146656

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

239

CRR-71 of 2022

Date of Decision: 20.11.2023

Hanuman

...Petitioner

Vs.

State of Haryana and another

...Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Amit Choudhary, Advocate, for the petitioner.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The present revision petition has been preferred against the order dated 13.08.2019 passed by the Court of Additional Sessions Judge, Hisar, whereby, the application filed by the prosecution under Section 319 Cr.P.C. was ordered to be dismissed in a case arising out of the FIR No. 1064 dated 25.10.2017 under Sections 120-B and 364-A of IPC, Police Station Sadar, Hisar.

2. As per the case of the prosecution, the FIR in the present case was registered on the basis of the statement made by Narender Godara son of the petitioner, who stated that he was working as a teacher and was living with his wife and mother at village Dhand, District Kaithal. However, his father Hanuman Das Godara was living alone in his house situated in his fields at village Kemri, District Hisar. On 25.10.2017, his father was sleeping in his house, in the

meantime, a Bolero vehicle reached there and took away his father. Many men and a woman were also with them. The complainant was informed by his cousin Subhash son of Rameshwar Godara and the complainant reached there. The complainant further alleged that Rohtash Godara and Sandeep Godara had demanded a sum of Rs. 10 lacs from him in order to release his father and Rohtash Godara had kidnapped his father with an intention to extort money and to cause him injuries.

3. During the course of the investigation, the police recorded the statement of Hanuman, petitioner/father of the complainant. As per him, at about 11.30 p.m. on 25.10.2017, someone knocked at the door of his room and called him outside. He went outside and saw that a Bolero vehicle was parked and 5 to 10 boys were standing there and he only knew Sandeep resident of Kemri whereas all other persons had muffled faces. When he came out, they started beating him and forcibly dragged him and put him in the Bolero vehicle. They kept him here and there and Sandeep asked him to bring Rs. 10 lacs from Rohtash otherwise they would kill him. Thereafter, he called up Rohtash and asked him to arrange Rs. 10 lacs. They took him here and there and after sometime, they left him near Dhingsada. Thereafter, Hanuman took phone from someone and made a call to his family members. Later on, he came to know that

Rohtash had hatched a conspiracy with Sandeep, Manjeet, Raj Kumar, Kuldeep and Mohar and had kidnapped him.

4. Learned counsel for the petitioner contended that in the present case, the statement of Hanuman, victim/father of the complainant was recorded and he specifically named Kuldeep. In fact, Kuldeep had actively participated in the commission of the crime and was involved in the kidnapping. He further contended that the co-accused Sandeep and Raju were arrested by the police and their disclosure statements were recorded and they had also named the respondent No. 2. The petitioner appeared as a witness, i.e., PW3 before the trial Court and he had also named Kuldeep respondent No. 2 in his testimony (Annexure P-5). Thereafter, an application was moved under Section 319 Cr.P.C. for summoning Kuldeep as an additional accused, however, the same was dismissed by the trial Court illegally.

5. Learned counsel for the petitioner vehemently argued that the trial Court had wrongly dismissed the application under Section 319 Cr.P.C. on the ground that Narender Godara son of the petitioner had not named Kuldeep as one of the accused. In fact, at the time of the registration of the FIR, Narender Godara, complainant was not aware of all the accused and when the petitioner/abducted person returned home, he disclosed the name of all the accused. Even the

petitioner in his statement under Section 161 Cr.P.C. (Annexure P-2), had specifically named respondent No. 2. Still further, even the co-accused of the respondent No. 2, i.e. Sandeep and Raju in their respective disclosure statements (Annexures P-3 and P-4) had specifically named the petitioner as one of the accused. Apart from that, while appearing as PW3, the petitioner/victim had specifically named the respondent No. 2 and there was sufficient incriminating evidence at this stage to summon Kuldeep respondent No. 2.

6. On the other hand, learned State counsel submitted that in the present case, during the course of investigation, the allegations levelled against Rohtash Godara, Ram Kumar, Sandeep, Manjeet, Raju and Mohar Singh had been found to be correct and they were arrested in the present case. However, no evidence was found against Kuldeep, respondent No. 2. Still further, during the course of investigation and verification by the Deputy Superintendent of Police, Hisar, respondent No. 2 was found innocent, on inquiry conducted from the respectables of village Kemri and also from the call details of respondent No. 2. As per the call details of Kuldeep respondent No. 2, he was not present in village Kemri from 24.10.2017 to 25.10.2017. Moreover, the respondent No. 2 was not mentioned by the petitioner, in his statement recorded under Section 164 Cr.P.C. Thus, respondent No. 2 was not found involved in the present case.

The summons were sent for the service of respondent No. 2 and despite service, there is no representation on behalf of respondent No. 2.

7. I have heard learned counsel for the parties and perused the record.

8. It has been held by the Hon'ble Supreme Court in the matter of Sagar Vs. State of U.P., 2022(2) RCR (Criminal) 344 as under:-

“8. The scope and ambit of Section 319 of the Code has been well-settled by the Constitution Bench of this Court in Hardeep Singh v. State of Punjab and others, (2014) 3 SCC 92 and paras 105 and 106 which are relevant for the purpose are reproduced hereunder:

"105. Power under section 319 CrPC, 1973 is a discretionary and an extra-ordinary 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, 1973. In section 319 CrPC, 1973 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, 1973 to form any opinion as to the guilt of the accused."

9. 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 noticed 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. The learned Single Judge of the High Court has even failed to consider the basic principles laid down by this Court while invoking Section 319 of the Code, which has been considered by the learned trial Judge under its order dated 30th January, 2018.

9. In the considered opinion of this Court, the provision under Section 319 Cr.P.C. is an enabling provision empowering the Court to take appropriate steps for proceedings against any person not being arraigned as an accused for having committed the offence under trial. In the instant case, from a perusal of the FIR (Annexure P-1), it is clear that the complainant had levelled specific allegations against Rohtash Godara and Sandeep Godara, who had allegedly kidnapped his father and had demanded a sum of Rs. 10 lacs. Further, even on recovery, the statement of Hanuman, victim was recorded under Section 161 Cr.P.C. However, in his statement under Section 161 Cr.P.C., the petitioner had named the respondent No. 2. Even in his statement under Section 161 Cr.P.C., Hanuman, petitioner had only stated that respondent No. 2 was also involved in the crime and no specific role has been attributed to him. Apart from that, it appears that there was a dispute between the petitioner on one side and Sandeep co-accused, on the other side and apart from respondent No. 2, several other persons have been named by the complainant and his father, i.e., petitioner. Still further, even in his testimony (Annexure P-5), the petitioner has also named respondent No. 2 as one of the conspirators and stated that respondent No. 2 was also involved in the present case. Thus, it is apparent that the trial Court had correctly dismissed the application under Section 319 Cr.P.C. It has been correctly observed by the trial Court that the testimony of

PW3 cannot be considered as an additional evidence so as to summon Kuldeep respondent No. 2 as an additional accused under Section 319 Cr.P.C. Thus, the impugned order suffers from no perversity or illegality and is liable to be upheld by this Court.

10. The petition is, accordingly, dismissed.

20.11.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

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