

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Sr. No.: 201

Criminal Revision No.2955 of 2019 (O&M)

Date of Decision: *February 10, 2023*

Hari Bhagat

..... PETITIONER(S)

VERSUS

State of Haryana and another

..... RESPONDENT(S)

. . .

CORAM: **HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA**

. . .

PRESENT: - Mr. Balraj Gujjar, Advocate for the petitioner.

Mr. Gurbir Singh Dhillon, AAG, Haryana for respondent
No.1-State.

Mr. Jagjot Singh, Advocate for respondent No.2.

. . .

Tribhuvan Dahiya, J (Oral)

Delay condoned.

2. This is a revision petition against the order dated 22.04.2019, passed by learned Additional Sessions Judge-cum-Fast Track Court, Faridabad whereby the petitioner has been summoned as an additional accused under Section 319 Cr.P.C., in case FIR No.98 dated 01.12.2018, under Sections 363, 450, 506 IPC and Section 6 of POCSO Act, 2012, registered at Women Police Station, NIT Faridabad, District Faridabad.

3. The facts of the case in brief are, on 12.11.2018, at about 12 O'clock in the night, when prosecutrix was sleeping in her room, the petitioner and three other friends of his, forcibly took her to an abandoned place, tied her mouth with cloth and committed rape upon her. They left her

at octroi post No.17 in the morning at about 5:00 a.m. She was also threatened not to disclose this incident to anyone, or else she as well as her family members would be killed.

4. The trial Court, vide order dated 22.04.2019, summoned the petitioner as an additional accused under Section 319 Cr.P.C., on the ground that the prosecutrix in her statement recorded under Section 164 Cr.P.C. as well as before the Child Welfare Committee, has categorically mentioned the petitioner, as also in her complaint dated 01.12.2018, based on which the instant FIR was lodged. In her testimony before the Court, again she reiterated her version *qua* the petitioner. Therefore, the trial Court was of the opinion that there was sufficient material on the file to summon the petitioner as an additional accused.

6. Learned counsel for the parties have been heard.

7. A perusal of the record shows that pursuant to lodging of the FIR, the case was investigated by the police who reached a conclusion that none of the allegations against the petitioner was correct, and he was innocent. Accordingly, an application was filed in the Court for his release/discharge from the case. The said application was decided by the trial Court after hearing the parties, vide order dated 31.01.2019 (Annexure P-8), whereby the discharge report was accepted and the petitioner was released from custody. This order was challenged by the complainant before this Court by filing CRM-M-11975-2019 titled *Chandani minor through LR vs. State of Haryana and others* (Annexure P-11); but the petition was dismissed as withdrawn with liberty to file a fresh one. Learned counsel for the complainant is not in a position to dispute the fact that no fresh petition

challenging the order of discharge was filed by the complainant thereafter.

9. In this background, it cannot be said that there was any material before the trial Court to summon the petitioner as an additional accused. He already stood discharged after thorough investigation by the police. Not only that, the order of discharge has passed the judicial scrutiny as well. Even the petition challenging the order accepting discharge was dismissed as withdrawn. The discharge, therefore, has attained finality; the issue cannot be re-opened on same facts, material and circumstances. There was no compelling circumstance before the trial Court to summon the petitioner as an additional accused, nor was there any possibility of his being convicted. In such circumstances, having been named by the prosecutrix in her testimony before the Court, is no ground to be summoned as additional accused. A reference in this regard can be made to the Supreme Court judgment passed in *Hardeep Singh vs. State of Punjab and another*, (2014)3 SCC 92. Para 112 of the said judgment reads as under:

112. However, there is a great difference with regard to a person who has been discharged. A person who has been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation; the court had come to the conclusion that there is not even a *prima facie* case to proceed against such person. Generally, the stage of evidence in trial is merely proving the material collected

during investigation and therefore, there is not much change as regards the material existing against the person so discharged. Therefore, there must exist compelling circumstances to exercise such power. The Court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the Court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398 Cr.P.C. without resorting to the provision of Section 319 Cr.P.C. directly.

10. In the instant case also, no material was found by the investigating agency against the petitioner and his consequent discharge stood accepted by the trial Court. Apart from the prosecutrix's testimony reiterating the earlier allegations, there was no other material before the trial Court making it imperative to exercise the power under Section 319 Cr.P.C. Besides, procedure under Section 398 Cr.P.C. was also not followed. Therefore, the impugned order summoning the petitioner as an additional accused becomes unsustainable in law, and is hereby set aside.

11. Petition stands allowed accordingly.

12. Pending miscellaneous application(s), if any, stand disposed of, as having been rendered infructuous.

February 10, 2023

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(Tribhuvan Dahiya)
Judge

Whether Speaking/ Reasoned:

Whether Reportable:

Yes/ No

Yes/ No