

Neutral Citation No.2023:PHHC:161542

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

110

CRR No.2537 of 2023 (O&M)
Date of decision: 13.12.2023

MXX

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Mukesh Rao, Advocate,
for the petitioner.

MANISHA BATRA, J.

1. The present revision petition has been filed under Section 401 of the Code of Criminal Procedure seeking quashing of the order dated 09.08.2023 passed by the Court of learned Additional Sessions Judge, Fast Track Special Court, Hisar to the extent to which an application filed under Section 319 of Cr.P.C. in case bearing No.SC/199/2023 titled as *State of Haryana v. Kuldeep* arising out of FIR No.527 dated 04.05.2022 registered under Sections 354, 376(2) (n), 506 and 354D of IPC at Police Station Sadar, Hisar and pending in the Court of learned Fast Track Court had been dismissed thereby declining to summon the respondents No.2 and 3 as additional accused.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR had been registered on the basis of a written complaint filed by the present petitioner-complainant "M" (name withheld) alleging therein that she was married with the

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respondent No.2 Kapil and resided in her matrimonial house along with her husband, parents-in-law and grandmother of her husband. In the month of December 2020, when she was alone in her house, the accused Anil who is husband of her sister-in-law (nanad) came to her house at about 2-3 PM. She had extended courtesies to him by serving tea etc. and had then gone to her room, where while following her, the accused Anil reached there and started molesting her and despite her resistance, he committed rape upon her. He also extended threats to her. Out of fear of defamation, the complainant did not disclose anything to anybody. The accused Anil tried to ravish her subsequently also and tried to blackmail her. She further alleged that some days thereafter, while she had gone to the fields to get fodder, the accused Kuldeep who is her father-in-law reached there and while disclosing that he had seen her with accused Anil and had captured a video of the act committed by him, he too forced her to have sexual intercourse with him and otherwise threatened to make her video viral.

3. It was further alleged by the petitioner that when she apprised her husband Kapil and mother-in-law Sushila as to what had happened with her, then instead of understanding her, they started assaulting her and extended threat to kill her by saying that she wanted to defame their family members. The complainant had mustered courage to disclose about the incident to her family members subsequently and reported the matter to the police. After registration of FIR, investigation proceedings were initiated. The accused Kuldeep i.e. father-in-law of the petitioner

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was arrested. Her husband Kapil, mother-in-law Sushila and brother-in-law Anil were found to be innocent during investigation and they were not arrested and challaned. Their names were kept in column No.2 of the challan report. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court for trial of the accused Kuldeep. He was chargesheeted.

4. As further revealed from record, during the course of trial, the sworn statement of the present petitioner i.e. the complainant was recorded by way of examination-in-chief and thereafter an application under Section 319 of Cr.P.C. had been filed by her for summoning her husband Kapil, mother-in-law Sushila and brother-in-law Anil as additional accused so that they could appear and face trial with the accused already arraigned for the commission of the subject offences. This application had been partly allowed by learned trial Court vide order dated 09.08.2023. Though the above named Anil was ordered to be summoned to face trial along with the co-accused Kuldeep but the prayer made by the petitioner for summoning Kapil and Sushila had been declined. Feeling dissatisfied, she has preferred the present revision petition.

5. It is submitted in the revision petition and it is vehemently argued by learned counsel for the revision petitioner that the impugned order is liable to be set aside to the extent to which the above named Kapil and Sushila were not ordered to be summoned as additional accused by learned trial Court. He has argued that overwhelming

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evidence in the form of testimony of the petitioner has come on record to show the complicity of above named Kapil and Sushila in the commission of offence of abetting rape by the co-accused Kuldeep and Anil upon the petitioner. Her statement also proves that both the proposed accused had extended beatings to her and had criminally intimidated her. Hence, he has argued that a case for commission of offences punishable under Sections 323, 506 as well as 376 read with Section 107 of IPC had been made out against the proposed accused. The learned trial Court failed to appreciate the arguments as rendered by the petitioner in a proper manner and hence, it is urged that the impugned order is liable to be modified/reversed to the extent to which the relief claimed by the petitioner was declined, the revision petition deserves to be accepted and the proposed accused are liable to be summoned and arraigned as additional accused to face trial along with the accused Kuldeep already facing trial and accused Anil who has been ordered to be summoned as additional accused.

6. I have heard learned counsel for the petitioner at considerable length and have carefully gone through the material which has been placed on record.

7. 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

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

8. 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

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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 that 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....”

9. 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.

10. On applying the above discussed principle of law to the peculiar facts and circumstances of the present case, this Court is of the considered opinion that the learned trial Court committed no illegality in dismissing the application filed by the petitioner. No doubt, the proposed accused were named by the petitioner in the FIR and it was alleged therein that when the petitioner had apprised about the factum of being ravished by the co-accused Anil and Kuldeep to these proposed accused, then they had extended beatings to her and had also threatened to kill her.

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In her sworn deposition also, the petitioner reiterated the same allegations. However, apart from the allegations as shown to be made above, nothing more had been alleged by the petitioner against them. Neither in the FIR, nor in her statement as recorded before the learned trial Court, the petitioner had stated as to on which particular date, month and year, she had apprised the proposed accused about the factum of her being ravished by the co-accused and when they had extended beatings to her. It is nowhere revealed that she had sustained any injury at their hands and was medico legally examined. The allegations of extending threats are also vague in nature because it is not stated by her as to what particular threats had been extended by the proposed accused and it is also not made out from her statement that she was criminally intimidated from the threats so extended by these accused so as to attract provisions of Section 506 of IPC.

11. Apart from, neither in the FIR nor in her sworn deposition, it was the version of the petitioner that the proposed accused had aided or abetted the commission of offence of rape by the accused Anil and Kuldeep. Mere statement of the petitioner that on being disclosed about this fact, they had extended beatings to her does not establish the ingredients of abetment as given under Section 107 of IPC. Except reiterating the version as given at the time of FIR, nothing more had been done by the petitioner. The evidence so led by her cannot be considered to be strong and cogent evidence as against the proposed accused. The petitioner was required to produce some evidence of such nature which

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could be considered to be stronger than mere probability of complicity of the proposed accused in the commission of the subject offence. However, there is absence of such satisfaction in the evidence as led by her. As such, in my considered opinion, there was no scope for the trial Court under Section 319 of Cr.P.C. to form any opinion as to the guilt of the proposed accused and in the absence of such satisfaction, the trial Court rightly refrained itself from exercising powers under Section 319 of Cr.P.C. as the satisfaction desirable for summoning the proposed accused namely Kapil and Sushila under Section 319 of 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.
- 13. Miscellaneous application(s), if any, also stand disposed of.

13.12.2023
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(MANISHA BATRA)
JUDGE

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