

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

129

CRR No.2638 of 2023
Date of decision: 16.11.2023

D. XXX

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Balbir Singh Jaswal, Advocate,
for the petitioner.

MANISHA BATRA, J.

1. The instant revision petition has been filed by the petitioner under Section 397 of the Code of Criminal Procedure making prayer for setting aside the order dated 16.10.2023 as passed by learned Additional Sessions Judge, Amritsar in Sessions case No.943 of 2021 titled as *State of Punjab v. Sunil Sharma*, whereby an application filed under Section 319 of Cr.P.C. by the prosecution for summoning Sumitra Devi wife of Sita Ram and Poonam wife of Alitesh who are mother and sister respectively of the accused Sunil Sharma (facing trial) as additional accused, had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of

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this petition are that the aforementioned FIR had been registered on 04.09.2021, on the basis of written complaint submitted by petitioner-victim (name withheld) alleging therein that her husband had died on 22.10.2010. She had been working and taking care of her two children. She had gone to the medical store run by the accused Sunil Sharma for taking medicines for them and had a conversation with him. They had started talking in a routine manner. In the year 2017, she had suddenly fallen ill and had called the accused Sunil Sharma for medicines. The accused had called her at his house as the medical store was going to open at after late hours and when she went inside, he gave her some medicines and after consuming which she did not remain in her senses and taking advantage of the situation, the accused committed rape upon her. He thereafter kept on indulging her in physical relations on the pretext of taking care of her children and herself in future. He made the complainant meet his sister Poonam and had taken her to a temple whereby he applied vermilion on her forehead. Thereafter, she was being treated by him as his wife but subsequently, when she became pregnant, he got her pregnancy aborted by giving her some medicine and started mistreating her and extending beatings to her. On 20.04.2021, the complainant was beaten up by the accused Sunil Sharma and his mother Sumitra Devi and as such she prayed for taking penal action against the accused Sunil Sharma, his mother and sister.

3. After registration of FIR, investigation proceedings were initiated. The accused Sunil Sharma was arrested. The proposed accused

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Sumitra Devi and Poonam were found to be innocent and had not been arrested and challaned. After completion of necessary investigation and usual formalities, challan under Section 173 Cr.P.C. was presented in the Court. Presently, the accused Sunil is facing trial for commission of offences punishable under Section 376 of IPC. After recording statement of petitioner-prosecutrix before learned trial Court, an application has been filed by her i.e. the present petitioner for summoning Sumitra Devi and Poonam as additional accused to face trial with the accused already arraigned. The said application had, however, been dismissed by learned trial Court vide order dated 16.10.2023.

4. Learned counsel for the revision petitioner has argued that the impugned order was not sustainable in the eyes of law as overwhelming evidence had come on record of learned trial Court in the form of testimony of the petitioner to prove the complicity of Sumitra Devi and Poonam, mother and sister respectively of the accused already arraigned in the crime of rape committed upon her. The learned trial Court, however, did not appreciate the said evidence in a proper manner and gravely erred in dismissing the application. With these broad submissions, he argued that the impugned order was liable to be set aside. The instant petition deserved to be accepted and the proposed accused were liable to be summoned and arraigned as additional accused to face trial along with the accused Sunil Sharma.

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

placed on record.

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 unrebutted, would lead to conviction. In the absence of 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 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.... ”

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 applying the above discussed principal 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. A perusal of contents of the FIR (Annexure P-1) reveals that the only allegation which had been levelled by the petitioner at the time of lodging of the same was that the accused Sunil Sharma had made her meet his sister Poonam. In her sworn deposition (Annexure P-2) as recorded before the learned trial Court, she is shown to have stated that accused Sunil had introduced her with his sister Poonam after committing rape upon her and the latter had assured that the accused Sunil Sharma would look after her children and herself. She further stated that Poonam had taken her at a temple where at her insistence, the accused Sunil Sharma had filled vermilion in her forehead and that Poonam had told her that she would treat her as sister-in-law.

10. Then with regard to Sumitra i.e. mother of the accused Sunil Sharma, the only allegation which is shown to be levelled in the FIR is that on 20.04.2021, she along with the accused Sunil Sharma had extended beatings to her and it was the same allegation which has been reiterated by her in her sworn deposition as against the mother of the accused Sunil Kumar. Undoubtedly, the trial Court was competent to exercise its power under Section 319 of Cr.P.C. even on the basis of the statement recorded by the petitioner in her examination-in-chief. However, from a perusal of her statement, it is very much explicit that she had made material improvements in her earlier version to show the complicity of Poonam sister of accused Sunil Sharma in the subject

crime. The evidence so led by her cannot be stated to be stronger and reliable evidence. Evidence as recorded by the petitioner qua mother the proposed accused Sumitra was mere reiteration of the allegations in the complaint which had been thoroughly investigated by the investigating agency had been found to be false and that is why the proposed accused Sumitra was found to be innocent. The testimony of the petitioner cannot at all be considered to be sufficient to prove that the proposed accused had in any manner connived with the accused Sunil Sharma and the petitioner was ravished at his hands either at the instance or instigation of the proposed accused. It is well settled proposition of law that the evidence for the purpose of arriving at a finding that there was a complicity of the proposed accused in the crime, must not be more than an evidence which if goes unrebutted would lead to conviction but it must be more than prima facie evidence recorded at the time of framing of charge. Obviously, there is absence of such satisfaction in the evidence led by the petitioner. 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 learned trial Court rightly refrained itself from exercising powers under Section 319 of Cr.P.C. as the satisfaction desirable for summoning the proposed accused under Section 319 of Cr.P.C. was not found on the record. As such, no irregularity or illegality can be stated to have been committed by 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 a proper perspective. This Court, therefore, has no reason to interfere with the findings as given by learned trial Court. Accordingly, the petition is dismissed.

16.11.2023
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(MANISHA BATRA)
JUDGE

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