

CRR-788-2024
Date of decision: 24.07.2024

...Petitioner

Versus

...Respondents

Present: Mr. Rajesh Duhan, Advocate
for the petitioner.

Ms. Geeta Sharma, DAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been filed for setting aside the impugned order dated 20.02.2024 passed by the learned Additional Sessions Judge/Fast Track Court, (POCSO), Panipat, whereby, the application filed by the petitioner under Section 319 Cr.P.C. for summoning respondents No.2 to 4 as an additional accused, has been dismissed.

2. Briefly, the facts are that about a year ago, respondent No.5 enticed away the minor daughter of the petitioner-complainant and raped her under the influence of an intoxicant. Respondent No.5 also took an obscene video of her and threatened to upload it on the internet and kill her if she disclosed about the incident to anybody. On 05.12.2022, respondent No. 5 entered the house of the petitioner following which the petitioner heard his daughter screaming for help. Thereafter, respondent No.5 ran away and the victim disclosed her ordeal to the petitioner. Consequently, the criminal

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justice machinery was set in motion by registration of FIR(supra), however, respondents No. 2 to 4 were exonerated during investigation.

3. Learned counsel for the petitioner *inter alia* contends that respondents No. 2 to 4 were declared innocent without proper and fair investigation. The victim herself appeared as PW1 and leveled specific allegations against respondents No.2 to 4, which were corroborated by the petitioner as PW2. Subsequently, an application under Section 319 Cr.P.C. was filed by the prosecution to summon respondents No. 2 to 4 as additional accused, however, the same was unfairly dismissed by the learned Court below vide impugned order dated 20.02.2024 which has been passed in violation of the ratio of law laid down in 'Hardeep Singh Vs. State of Punjab and others' 2014 (3) SCC 92. The offence committed against the victim is heinous in nature and must be taken with utmost seriousness to create a deterrent effect.

4. Having heard learned counsel for the parties and after perusing the record, this Court finds no infirmity in the impugned order passed by the Court below. A perusal of the record clearly indicates that the impugned order was passed by the learned trial Court on the ground that there is no substantive evidence against the private respondents who are sought to be summoned as an additional accused under Section 319 Cr.P.C. Moreover, there are no specific allegations against the private respondents and all the allegations leveled against them are general in nature, which are not corroborated by any other material or medical evidence. As such, the private respondents cannot be summoned by invoking the power under Section 319 Cr.P.C. only on the bald allegations made by the petitioner.

5. This Court is of the considered opinion that the learned trial

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Court has passed a well reasoned order. The material available on record, does not satisfy the crucial test in view of the ratio of law laid down in ***Hardeep Singh's case (supra)***, i.e. the test of there being more than a *prima facie* case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction.

6. In the absence of any material suggesting existence of more than *prima facie* case available during the course of trial of an offence, Courts ought to refrain themselves from exercising its discretionary and extraordinary power under Section 319 Cr.P.C. The Constitution Bench of the Hon'ble Supreme of India in ***Hardeep Singh's case (supra)*** has held that the power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised only on the basis of the material available before the Court during a trial and not because the Magistrate or the Sessions Judge is of the opinion that some other accused/person may also be guilty of committing that offence.

7. The trial Court must evaluate the material against the person sought to be summoned and then adjudge whether such material, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible material, the power under Section 319 Cr.P.C. ought not to be invoked. A two Judge Bench of the Hon'ble Supreme Court in '**Juhru and others Vs. Karim and another**' (2023) 5 SCC 406 speaking through Justice Surya Kant, while relying upon ***Hardeep Singh's case (supra)*** has held as under:-

"16. It is, thus, manifested from a conjoint reading of the cited decision that power of summoning under Section 319 CrPC is not to be exercised routinely and the existence of more than

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prima facie case is sine qua non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 CrPC, and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 CrPC ought not to be invoked.”

8. In view of the above, no ground is made out to interfere in the finding given by the learned trial Court, and thus, the present revision petition stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

24.07.2024
Neha

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