

Sr. No.140

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

CRR-1207-2023
Date of decision: 22nd February, 2024

SUDHIR **.....Petitioner**

versus

STATE OF HARYANA AND ANOTHER **.....Respondents**

CORAM: HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Amardeep Sheoran, Advocate
for the petitioner.

Mr. Kirpal Singh Thakur, AAG, Haryana.

HARPREET KAUR JEEWAN, J.

1. The present criminal revision petition has been filed impugning the order dated 29.11.2022 passed by Additional Sessions Judge, Fast Track, Special Court, Rewari, dismissing the application moved by the Public Prosecutor under Section 319 Cr.P.C. for summoning the respondent No.2 as an additional accused to face trial in FIR No.180 dated 07.10.2019, under Section 75 of Juvenile Justice Act, 2015 and Section 12 of POCSO Act, 2012, registered at Police Station Rampura, District Rewari (Annexure P-1).
2. Brief facts are that on 07.10.2019, the father of the victim reported the matter to the Police for taking action against Vijay Kumar, Teacher (Chemistry) of xxxx school and for tracing of his daughter (victim). It is contended in the said complaint that on 05.09.2019, the victim came back to her house from school and made a complaint against her teacher Vijay Kumar. Thereafter, the mother of the victim asked about the said matter to the Principal of the school, who told her to come to school on 09.10.2019. On 07.10.2019, at about 11:00 AM, the victim went

from her house without informing anyone and she also took away her documents and clothes. The parents of the victim inquired about their daughter from the relatives but she could not be found. One diary was recovered wherein the victim wrote about the harassment and misbehaviour done by the teacher. A request was made to take legal action against the teacher and to trace out the victim.

2.1 As per the final report presented under Section 173 Cr.P.C. (Annexure P-2), accused Vijay Kumar, Teacher was arrested and on 08.10.2019, the victim was recovered from Dhamlawas Mod, Narnaul. The statement of the victim was recorded under Section 164 Cr.P.C (Annexure P-3). As per the status report filed by way of affidavit of Sh. Pawan Kumar, H.P.S., Deputy Superintendent of Police, City Rewari, District Rewari, the victim was produced by her mother. The victim refused to undergo her medico-legal examination contending that no wrong act had taken place with her. After completion of the investigation, final report under Section 173 Cr.P.C. was presented before the trial Court against teacher Vijay Kumar on 01.11.2019. The prosecution evidence has been concluded and statement of the accused has already been recorded. Now the case is fixed for defence evidence. The prosecution moved an application under Section 319 Cr.P.C. for summoning respondent No.2 as an additional accused, which has been dismissed by the trial Court by passing the impugned order.

3. Learned counsel for the petitioner contends that the trial Court did not consider the fact that the victim (PW-2) and father of the victim namely Sunil Kumar (PW-5) have deposed that respondent No.2 did not take any action against accused Vijay Kumar, being a Head and Principal of the school. It is further contended that the crime committed by the Teacher was reported to the Principal but he did not take any action against him, which clearly shows that he wanted to

as such, the order of dismissal of the application under Section 319 Cr.P.C. is liable to be set aside.

4. Learned State counsel has also taken a plea that respondent No.2 was *de facto* custodian of the minor victim during her school hours. Being the Principal of the school, it was the duty of respondent No.2 to protect the interest of the minor victim, as such, the impugned order is liable to be set aside.

5. I have considered the aforesaid contentions.

6. The trial Court has observed that the proceedings in the present case were initiated on the basis of the complaint dated 07.10.2019 (Ex.P-10/PW-5) moved by the father of the victim. It is mentioned in the said complaint that one diary was recovered from the victim in which, it was written that Vijay Kumar, Teacher has harassed and misbehaved with the her. The trial Court also made a reference to the statement of the victim recorded under Section 164 Cr.P.C. on 08.10.2019 and observed that the victim has not specifically mentioned anywhere that she disclosed about the incident to the Principal at any point of time prior to the incident of tearing of the paper by her. The trial Court had also recorded the defence version in Para No.3 that on 03.10.2019, a teacher namely Ms. Prem Lata made a complaint to the Principal (respondent No.2) against the victim regarding her act and conduct in the examination as she was caught cheating in the Chemistry paper and she had torn the answer sheet and a meeting was convened and the student (victim) was also called in the said meeting. The student (victim) had admitted her guilt and she was given a warning not to repeat the said act in future. Thereafter, the Principal informed the mother of the said student (victim) but she did not come and these proceedings were recorded in the book on 03.10.2019. The defence has further alleged in the reply that the examination was being held on

had supported the version of the complainant during the investigation. On 05.10.2019, the student (victim) had appeared in her Biology examination.

7. While appreciating the testimony of the victim (PW-2) and testimony of father of the victim (PW-5), the trial Court concluded that no such evidence has come on record that the Principal of the school had the knowledge of any misbehaviour of accused Vijay Kumar, Teacher with the victim prior to 03.10.2019. Relying upon the decision of the Hon'ble Apex Court in "**Brijendra Singh and Ors. Vs. State of Rajasthan**"; 2017 (3) Criminal Court Cases 334 (SC), the trial Court observed that for summoning of an additional accused under Section 319 Cr.P.C., the test 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 the extent that the evidence, if goes un rebutted, would lead to conviction. With the aforesaid reasons, the trial Court has dismissed the said application under Section 319 Cr.P.C.

8. The sequence of events indicate that the alleged occurrence of misbehaviour and harassment is dated 03.10.2019. On 05.09.2019, the victim came home and reported her mother about the alleged misbehaviour and harassment by the Teacher-Vijay Kumar/accused. On 07.10.2019, the victim left home and on the same day i.e. 07.10.2019. the matter was reported to the Police and FIR (Annexure P-1) was lodged. On 08.10.2019, the victim was found.

9. Learned counsel for the petitioner, very candidly, admitted that no written complaint was moved either by the parents of the victim or by the victim to her Principal. The only allegations in the FIR against respondent No.2 is that on 05.09.2019, the mother of the victim called the Principal, who told her to come to the school on 09.10.2019. In the meantime, on 07.10.2019, the victim went away from home and on the same day, the matter was reported to the Police.

10. Keeping in view the said circumstances, when no written complaint was made to the Principal reporting the alleged harassment of the victim by the teacher, the trial Court has rightly not proceeded against the Principal by exercising the discretionary powers under Section 319 Cr.P.C. The Constitution Bench of the Hon'ble Apex Court in “**Hardeep Singh vs. State of Punjab and others**”; (2014) 3 **SCC 92** has explained the scope of exercising powers by the Court under Section 319 Cr.P.C. The relevant portion reads as under:-

“98. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary 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.

99. 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](#) Cr.P.C. In [Section 319](#) Cr.P.C. 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](#) Cr.P.C. to form any opinion as to the guilt of the accused.”

(Emphasis supplied)

11. In view of the ratio of the aforesaid decision by the Constitution Bench of the Hon’ble Apex Court and keeping in view the facts of the present case, I am of the considered opinion that the trial Court has rightly declined to exercise the discretionary powers under Section 319 Cr.P.C. There is no written complaint having been made to respondent No.2 for taking action against accused Vijay Kumar, Teacher. In the statement of the victim under Section 164 Cr.P.C. (Annexure P-3), recorded immediately after the occurrence i.e. on 08.10.2019, though she has stated that she tried to talk with the School Administration and no one heard her, but she has not categorically stated that she reported the matter to the Principal (respondent No.2). Neither any date of reporting the matter to the School Administration is mentioned in the FIR nor in the statement of the victim recorded under Section 164 Cr.P.C, as such, the trial Court has rightly declined to summon respondent No.2 as an additional accused with the aid of Section 319 Cr.P.C.
12. No irregularity or illegality is found in the impugned order, as such, no ground for interference in the impugned order is made out. Consequently, the present criminal revision petition stands dismissed.
13. All the pending miscellaneous application(s), if any, shall also stand disposed of.

(HARPREET KAUR JEEWAN)

JUDGE

22nd February, 2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No