

Neutral Citation No. 2024:PHHC:026599

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CRM-M-24831-2023 (O&M)
Reserved on : 16.01.2024
Pronounced on : 26.02.2024

Gurjinder Singh and another ...Petitioners

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. G. P. S. Bal, Advocate
for the petitioners.

Ms. Ruchika Sabherwal, DAG, Punjab.

Mr. Sandeep Gahlawat, Advocate
for the complainant.

MANISHA BATRA, J.

1. The present petition has been filed by the petitioners under Section 482 of Code of Criminal Procedure for setting aside two orders as passed by the Additional Sessions Judge, Mohali (*hereinafter referred to as 'the trial Court'*) in case bearing No. SC-82-2018, titled as ***State vs. Gursewak Singh and others***, arising out of FIR No. 230 dated 29.11.2017, registered under Sections 328, 363, 376(D) of IPC at Police Station Lalru, District SAS Nagar. For the sake of convenience, this Court will deal with both the prayers as made by the petitioners one by one.
2. So far as the order dated 13.04.2023 (Annexure P-4) is concerned, the same has been passed by the trial Court thereby declining the prayer made by petitioner No. 1 Gurjinder Singh for discharge, leading to

Neutral Citation No. 2024:PHHC:026599

dismissal of his application filed under Section 227 Cr.P.C. filed for that purpose. Before delving into the question of legality of the said order, this Court will precisely refer to the facts, which are relevant for the purpose of disposal of the present petition.

3. The aforementioned FIR has been registered on the basis of the statement recorded by the prosecutrix 'H' (*name withheld*) alleging therein that in the intervening night of 13/14.11.2017, when she was studying in her house and her parents were sleeping, the door bell of the house rang and she thought that her brother would have come. When she opened the door, she found two persons standing, who had come with covered faces. One of them made her smell some intoxicating substance and they both made her forcibly sit in a car, on the driving seat of which, petitioner No. 1 Gurjinder Singh was sitting. She was taken to some unknown place and was ravished by all the three persons, who had kidnapped her from her house and then, she was left near a hotel at village Kurali on 15.11.2017, from where, she managed to reach her maternal uncle's place and then to her house. She also alleged that due to the said incident, her marriage, which was fixed for 19.11.2017, could also not take place. Out of fear and due to threats extended by the accused persons to face dire consequences, she initially did not disclose about the incident to anybody but on 28.11.2017, she felt pain in her abdomen and was admitted to a hospital. Then, she had narrated about the incident to her parents. After registration of the case, statement of the prosecutrix under Section 164 Cr.P.C. was recorded. She was also medico-legally examined. Accused Gursewak Singh was arrested. He was also medico-legally examined. After completion of necessary investigation and usual formalities, *challan* under Section 173 Cr.P.C. was presented against him. It has come

Neutral Citation No. 2024:PHHC:026599

on record that at the time when the statement of the prosecutrix was to be recorded, the trial Court gave a direction to concerned SHO to file the status report qua the role of the present petitioners, who had neither been arrested nor had been declared to be innocent in the *challan* report. In response thereto, a supplementary *challan* under Section 173(8) Cr.P.C. was filed before the trial Court, wherein both the petitioners were declared to be innocent.

4. As per record, after getting herself examined in chief, the prosecutrix moved an application under Section 319 Cr.P.C. on 11.09.2018 for summoning the present petitioners as additional accused. The said application was allowed by the trial Court, vide order dated 20.02.2019 and they were ordered to be summoned as additional accused to face trial. Though previously they did not appear and were declared proclaimed offenders but subsequently, they were extended benefit of bail. Petitioner No. 1 Gurjinder Singh moved an application for discharging him on the ground that being brother of the main accused Gursewak Singh, he had been falsely implicated in this case, besides taking several other grounds. However, vide order dated 13.04.2023, the application so moved by petitioner Gurjinder Singh had been dismissed and feeling aggrieved, he along with co-petitioner Parminder Singh has filed the present petition seeking quashing of impugned order dated 13.04.2023.

5. It is submitted in the petition and learned counsel for the petitioners argued that while passing the impugned order, the trial Court did not apply its judicious mind as it ignored the fact that there were inconsistencies in the statements of the victim as recorded at the stage of investigation and the same created a serious dent about the veracity of her

Neutral Citation No. 2024:PHHC:026599

version about involvement of petitioner Gurjinder Singh in the subject crime. He also argued that in fact, the story as narrated by the victim was highly improbable, unnatural and untrustworthy. She was in love affair with the brother of petitioner Gurjinder Singh and had herself expressed her desire to go with him on 14.11.2017. There were regular calls between his brother and the prosecutrix and they used to meet frequently but all these facts were concealed at the time of lodging of the FIR and even during the course of investigation. He further argued that the trial Court had ignored the fact that the investigation in this case had been conducted by a senior police officer of the rank of Assistant Inspector General of Police and the petitioners were found to be innocent. He further argued that as such no case for framing charge as against petitioner Gurjinder Singh has been made out and accordingly, urged that the impugned order dated 13.04.2023 is liable to be set aside; the present petition deserves to be accepted and petitioner Gurjinder Singh deserves to be discharged from the offences, for which, he has been booked.

6. *Per contra*, learned State counsel has filed status report, as per which, both the petitioners were found to be innocent during the course of investigation but were ordered to be summoned as additional accused on allowing an application under Section 319 Cr.P.C. by the trial Court and the order of the trial Court was affirmed by a co-ordinate Bench of this Court and the same has attained finality.

7. Learned counsel for respondent No. 2/complainant vehemently argued that there is no illegality or infirmity in the order passed by the trial Court as since the very beginning, the prosecutrix had taken the names of the present petitioners as the persons, who along with already arraigned accused

Neutral Citation No. 2024:PHHC:026599

Gursewak Singh had kidnapped her by making her consume some stupefying and intoxicating substance and had gang raped her. Therefore, he argued that the impugned order does not warrant any interference.

8. Before proceeding further, it would be proper to have a look at the provisions of Section 227 of Cr.P.C., which read as under:

“227. Discharge

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

9. Now the question that has arisen before this Court for consideration is as to whether an accused, after having been summoned by the trial Court under Section 319 Cr.P.C. as an additional accused, can seek discharge under Section 227 of Cr.P.C.? In the considered opinion of this Court, the answer to this question is in negative as the well settled proposition of law is that there is no finality attached to Section 319 Cr.P.C. and the exercise of power under Section 319 Cr.P.C. must be placed on higher pedestal. The accused summoned under Section 319 Cr.P.C. are entitled to invoke the remedy under the law against an illegal and improper exercise of power under Section 319 Cr.P.C., which has already been done by the petitioners, but that cannot have the effect of the order being undone by seeking a discharge under Section 227 Cr.P.C. Reliance in this regard can be placed upon *Yashodhan Singh and others vs. The State of Uttar Pradesh and another : 2023 AIR (Supreme Court) 3878*, which is a recent pronouncement, in which the Hon’ble Supreme Court had relied upon the

Neutral Citation No. 2024:PHHC:026599

observations made by a Constitution Bench of that Court itself in ***Hardeep Singh vs. State of Punjab and others : (2014) 3 SCC 92*** and had observed that what was essential for the purpose of Section 319 Cr.P.C. was that there should appear some evidence against a person not proceeded against; the stage of the proceedings is irrelevant. It was also held that a person, whose name does not appear even in the FIR or in the charge-sheet or whose name appears in the FIR and not in the main part of the charge-sheet but in Column 2 and has not been summoned as an accused in exercise of the powers under Section 193 Cr.P.C. can still be summoned by the Court, under Section 319 Cr.P.C. but the inquiry, which is contemplated as against a person who has been discharged prior to the commencement of the trial in terms of Section 227 Cr.P.C., then power under Section 319 Cr.P.C. can be exercised. It was also held by Hon'ble Supreme Court that the accused summoned under Section 319 Cr.P.C. are entitled to invoke the remedy under the law against an illegal and improper exercise of power under Section 319 Cr.P.C., which has already been done by the petitioners, but that cannot have the effect of the order being undone by seeking a discharge under Section 227 Cr.P.C. Hon'ble Supreme Court had also placed reliance upon ***Jogender Yadav Vs. State of Bihar & Ors. : 2015 ALL-MR (Cri).3707 (SC)***, wherein similar observations had been made.

10. On applying the ratio of law as discussed above to the peculiar facts and circumstances of the present case, it may be noted that petitioner No. 1 Gurjinder Singh, who had moved application seeking discharge before the trial Court, and petitioner No. 2 Parminder Singh were ordered to be summoned as additional accused under Section 319 Cr.P.C. by the trial Court. Not even this, they had challenged the said order by filing a petition

Neutral Citation No. 2024:PHHC:026599

before this Court, bearing **CRM-M-7448-2021**, and it has come on record that the said petition had also been dismissed and the order passed by the trial Court has attained finality. Meaning thereby that for all intents and purposes, the petitioners, who were declared innocent by the investigating agency, were summoned by the trial Court in exercise of its power under Section 319 Cr.P.C., which is obviously based on the satisfaction recorded by it that on the basis of the evidence it had emerged that they along with already arraigned accused were liable to be tried with him. As such, they cannot seek their discharge.

11. It is also well settled that discharge as contemplated under Section 227 Cr.P.C. is at a stage prior to the commencement of the trial and immediately after framing of charge but when power is exercised the under Section 319 Cr.P.C. to summon a person to be added as an accused in the trial to be tried along with other accused, such a person cannot seek discharge as the court would have exercised the power under Section 319 Cr.P.C. based on a satisfaction derived from the evidence that has emerged during the evidence recorded in the course of trial and such satisfaction is of a higher degree than the satisfaction which is derived by the court at the time of framing of charge. The authorities relied upon by the petitioners are not applicable to the present case as they are distinguishable on the basis of facts and circumstances of the case. The other argument as raised by the petitioners that there was no *prima facie* evidence has already been dealt with and rejected by the trial Court as well as by this Court, while dismissing the petition filed by the petitioners challenging their summoning order. Therefore, there is no requirement to again deal with the same as the present petition fails at the very first test, where it has come out that the

Neutral Citation No. 2024:PHHC:026599

remedy under Section 227 Cr.P.C. was not available to the petitioners as they were summoned as additional accused under Section 319 Cr.P.C. and that too, the summoning order has attained finality, after being upheld by this Court and there being no further challenge to the same.

12. Now coming to the order dated 18.05.2022 (Annexure P-14), which is also subject matter of challenge by the petitioners. A perusal of this order reveals that before framing of charge as against them, the petitioners had also moved an application for summoning Assistant Inspector General of Police, Bureau of Investigation, Punjab (*for short* 'AIG') with the supplementary report filed under Section 173(8) Cr.P.C. along with entire record of inquiry conducted by him. It is also revealed from the record and as also discussed above that initially challan was filed only against accused Gursewak Singh and the present petitioners were neither declared innocent nor any investigation was shown to be pending qua them and it is only on the asking of the trial Court that a supplementary challan under Section 173(8) Cr.P.C. was presented in the Court to the effect that inquiry was conducted by the AIG and they were found to be innocent. This application had been moved by the petitioners only after application filed by the prosecutrix for summoning them as additional accused had already been allowed and they had joined the proceedings. The trial Court is shown to have dismissed the application on the ground that the record and the evidence, which the petitioners were seeking to summon at that stage, which was the stage of framing of charge, could not be looked into, being the defence of the accused and they could produce the proposed defence evidence at the appropriate stage. I see no reason to differ with the observations made by the trial Court in view of the fact that well settled

Neutral Citation No. 2024:PHHC:026599

proposition of law is that the defence of an accused is not to be looked into at the stage of framing of charge as there is no such provision in the Cr.P.C. The trial Court, after giving detailed reasons, had dismissed the aforementioned application as filed by the petitioners. Therefore, in view of the above discussion and the reasons recorded, I see no reason to interfere with the impugned order dated 18.05.2022 as well.

13. Accordingly, finding no merit in the present petition, the same is dismissed.

14. However, it is made clear that the observations made herein above are only for the purpose of deciding the present petition and the same shall not be construed as an expression of opinion of this Court on the merits of the case.

26.02.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>