

**CRM-24059-2022 in/and
CRR-1450-2022 (O & M)
Date of decision: 16.09.2024**

...PETITIONER

V/S

...RESPONDENT

Present: Mr. Parminder Pal Singh, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

CRM-24059-2022

1. For the reasons mentioned in the application, same is allowed.
2. CM stands disposed of.

MAIN CASE

1. The instant revision petition has been preferred against the impugned orders dated 31.03.2022 and 19.04.2022 passed by learned Sessions Judge, Fast Track, Special Court, POCSO Act, Jind, vide which (order dated 31.03.2022), the petitioner has been summoned as an additional accused and subsequently charge-sheeted vide impugned order dated 19.04.2022 to face trial along with co-accused by allowing the application filed under Section 319 of Cr.P.C. in case FIR No.15 dated 08.02.2021 registered under Sections 363, 366 read with Section 34 IPC and Section 6 read with Section 17 of POCSO Act at Police Station Pillu Khera, District Jind.
2. Brief facts of the case as alleged are that the FIR (supra) was



registered on the statement of complainant on the allegations that 01.02.2021, he along with his family, after taking dinner had gone to sleep and on the next day, when he woke up, he did not find his minor daughter at home. Upon search, the complainant came to know that Sajjan and Lavish along with two other boys have induced his minor daughter to run away from home. Sajjan was also missing from his house since that very day. Upon further inquiry, the complainant came to know that three sisters and some other persons are extending co-operation to Sajjan and they are misguiding him time and again. Hence the FIR (supra) was registered.

3. In consequence of the FIR (supra) and after completion of the investigation by the concerned police, final report under Section 173 Cr.P.C. was presented in the learned trial Court against co-accused but not against the present petitioner. The learned trial Court framed charges against the co-accused. Thereafter, the prosecution moved an application dated 07.03.2022 under Section 319 Cr.P.C. before the learned trial Court for summoning the petitioner as an additional accused and the same was allowed vide impugned order dated 31.03.2022 and subsequently, charges against the petitioner were framed on 19.04.2022. Hence, the present revision petition.

4. Learned counsel for the petitioner *inter alia* contends that the petitioner is not named in the FIR (supra) (Annexure P-1). Even in the statement of prosecutrix recorded under Section 164 Cr.P.C. (Annexure P-8) by learned jurisdictional Magistrate, there is no allegation levelled against the petitioner. During the course of the investigation, the complicity of the petitioner was decided by the investigating agency and it was found that allegations levelled against him are false as he is alleged to have helped the main accused-Sajjan with money on 05.05.2021 and the petitioner had never



visited Delhi or Noida on the said date, rather, he was present at Kurukshetra.

5. Learned counsel further submits that even the prosecutrix, in her statement appearing as PW-2 (Annexure P-6), has not levelled any allegation with regard to commission of penetrative sexual assault, rather, the allegations are only to the extent that petitioner helped the main accused with money. Learned counsel further submits that learned trial Court has passed the impugned order in a mechanical manner without appreciating the facts of the case whether it satisfies the test of more than *prima facie* case as laid down by the Constitutional Bench of the Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab, SC 2014(1) RCR (Criminal) 623.***

6. *Per contra*, learned State counsel submits that the prosecutrix was examined as PW-2 by learned trial Court and she has specifically named the petitioner in helping the co-accused with money. As such, the petitioner had helped the main accused in committing sexual assault with the prosecutrix. He submits that the impugned order has been passed in accordance with law and due appreciation of the entire evidence on record and thus, no interference is warranted by this Court.

7. I have heard the learned counsel for the parties and perused the material available on record. It transpires that the FIR (supra) was registered at the instance of the complainant and initially, challan was presented against Sajjan only and all other accused were declared innocent during the investigation. Since, the petitioner was not involved in the case, in any manner, the prosecutrix never named him as an accused.

8. Mere statement of the prosecutrix or complainant, which is not substantiated by any credible material, cannot be a ground to invoke the discretionary and extraordinary power of this Court to summon an additional



accused under Section 319 Cr.P.C. In the absence of any material suggesting existence of more than prima facie case available during the course of trial of an offence, the 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 Court in ***Hardeep Singh's case*** (*supra*) has held that the power under Section 319 Cr.P.C is a discretionary and extraordinary power. It is to be exercised only on the basis of the material available before the Court during the 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. Speaking through Justice B.S. Chauhan, the following was observed :

"105. 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.

106. 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.”

9. Subsequently, Hon'ble Supreme Court in the case of **Sagar Vs. State of Uttar Pradesh and another** Criminal Appeal No. 397 of 2022 (Arising out of SLP(Crl) No.7373 of 2021), referring to **Hardeep Singh** (supra) made the following observations:

"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 noticed above 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."

10. Recently Hon'ble Supreme Court in case of **Juhru & Ors. Versus Karim & Anr. 2023 AIR (Supreme Court) 1160** observing the scope of section 319 Cr.P.C held that:

"It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a prima-facie case is sine quo 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 Cr.P.C., 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 is, 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 Cr.P.C. ought not to be invoked."

11. In view of the discussion made hereinabove, the present revision

petition is allowed in the following terms: -

- (i). The impugned order dated 31.03.2022 passed by learned Sessions Judge, Fast Track Special Court, POCSO Act, Jind and order dated 19.04.2022, vide which, charges against the petitioner have been framed are hereby, set aside, along with all consequential proceedings.
- (ii). Nothing observed herein shall be construed as a comment on the merits of the case at hand, thereby, causing prejudice to the case of the prosecution.

12. Pending CRM(s), if any, are also disposed of accordingly.

September 16, 2024
manisha

(HARPREET SINGH BRAR)
JUDGE

- (i) Whether speaking/reasonedYes/No
- (ii) Whether reportableYes/No