

CRR-2846-2018 (O&M)

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

CRR-2846-2018 (O&M)
Date of decision: 04.11.2024

SADIQ MOHAMMAD

... PETITIONER

V/s

STATE OF U.T. CHANDIGARH AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

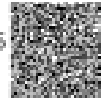
Present: Mr. K.S. Dadwal, Advocate
For the petitioner.

Mr. P.S. Paul, Addl. P.P. U.T., Chandigarh.

Mr. Sapan Dhir, Advocate
for respondent No.2.

SUMEET GOEL, J.

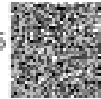
1. Instant criminal revision petition is directed against the order dated 25.07.2018 passed by Additional Sessions Judge-cum-Judge Special Court, Chandigarh. Vide impugned order, application filed by the prosecution under Section 319 of the Code of Criminal Procedure seeking summoning of the petitioner as additional accused was allowed. Resultantly, the petitioner was summoned to face trial under Sections 376, 363, 366 IPC, and Section 4 of the POCSO Act.
2. Facts of the case are that the complainant in the case got FIR No.428, dated 09.10.2017 under Section 363 of the IPC,

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registered at Police Station Sector 39, Chandigarh. In the FIR, it was alleged that the daughter of the complainant, i.e., the victim of the case, aged 17 years, had gone missing from her home. The Police, during the investigation of the case, traced and recovered the victim and got her statement under Section 164 of the Cr.P.C. recorded in the case. The story as unfolded by the statement of the victim was that on the night of 08.10.2017, main accused Irfan forced the victim to come out of her home asking for some money. When the victim came out of her house to give money to Irfan, he dragged her inside a vehicle, and locked the vehicle. He told the victim that he would drop her back after having some outing. The driver of the vehicle left both of them, i.e., the victim and Irfan, at a Lake. Thereafter, the victim started receiving calls from her parents, and she asked Irfan to drop her back home, but Irfan forcibly took her from the Lake to Hoshiarpur. They stayed at Hoshiarpur Railway Station for the day and went to Delhi. After reaching Delhi and having food, the victim did not know what happened to her, but the next morning she felt like something wrong had happened to her and she felt pain in her abdomen and her head. In the morning, Irfan told her to go back to her house. Then they together came back upto Ludhiana, from where the victim went all alone to Hoshiarpur.

3. Prosecution, during the course of the examination of its witnesses in the case, examined the complainant, being the father of the victim, as PW-1 in the case. During his Examination-in-Chief, he

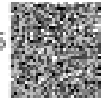
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named the present petitioner and one Rashid also as accused in the case. The allegations against Rashid were that he helped the accused Irfan by permitting him to stay in his house along with the victim at Gurgaon. It is alleged that the accused Irfan repeatedly raped the victim and that the accused Rashid also helped Irfan in the crime and extended a threat to the complainant and his family to withdraw the complaint in the case; otherwise, he would eliminate his entire family. However, the allegation against the present petitioner was that accused Irfan, along with the present petitioner forcibly took the victim from her house in his car on the day of the incident.

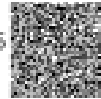
4. The victim of the case was examined as PW-2 by the prosecution. In her deposition she deposed against the petitioner by alleging that when the accused Irfan forcibly took her from her house in the car, at that time petitioner was driving the said car and dropped them at Lake, Sector 42. It is further alleged that Irfan called the petitioner telephonically, whereupon the petitioner told Irfan to take the victim to Hoshiarpur.

5. On the strength of these statements of complainant and the victim two separate applications were filed by the prosecution under Section 319 of the Cr.P.C. on 29.05.2018 seeking summoning of the petitioner as additional accused to face trial in the case. Consequently, vide the impugned order dated 25.07.2018, the trial Court summoned the petitioner as additional accused to face trial in the case.

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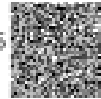
6. Impugning the order dated 25.07.2018 passed by the trial Court, it is argued on behalf of the petitioner that the order summoning the petitioner as an additional accused is bad in law, as the order was passed by the trial Court without proper application of mind to the facts and circumstances of the case. The petitioner was not named initially by the complainant or the victim in the case; therefore, he is not even named in column No.2 of the final report filed by the police. The petitioner is named as accused for the first time in Court during the recording of the Examination-in-Chief, whereas, as per the allegations, the name of the accused was known to the victim since the beginning and he is related to the initial stage of the offence alleged. It is submitted that the allegation against the petitioner does not withstand the test of plausibility and is, on its face, highly improbable. The Court has summoned the petitioner solely on the basis of suspicion; whereas, the trial Court ought to have seen whether the allegations against the petitioner constitute more than a *prima facie* case having the possibility of his conviction. It is argued that power under Section 319 of the Cr.P.C. is to be invoked not as a matter of course, but in circumstances where the invocation of such power is imperative to meet the ends of justice. Before parting with his submissions, the learned counsel for the petitioner referred to Miscellaneous Application bearing No. CRM 19295 of 2022, filed by him in the instant criminal revision petition, whereby the final judgment of acquittal passed by the trial Court against the main

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accused already facing trial in the case is sought to be placed on record. Relying upon the said judgment of acquittal dated 10.12.2021 passed by the trial Court, it is contended that when the prosecution has failed to prove the allegations against the main accused who faced trial, no useful purpose would be served by making the present petitioner face trial in the case as an additional accused. Reliance is placed on the Judgment of the Hon'ble Supreme Court in the case of ***Sukhpal Singh Khaira vs. The State of Punjab 2023(4) RCR (Criminal) 108***, to contend that the power under Section 319 of the Cr.P.C. to summon a person as an additional accused is required to be exercised before the conclusion of the trial. It is submitted that since the trial has already been concluded in the case, the summoning of the petitioner under Section 319 of the Cr.P.C. is not sustainable.

7. While refuting the submissions made on behalf of the petitioner, it is submitted by the learned State counsel that the impugned order is a well-reasoned order passed by the trial Court and does not warrant any interference by this Court. It is submitted that the victim, in her very initial version of the incident, mentioned that when accused Irfan dragged her inside the car and took her along, the said car was being driven by another person who dropped them at Lake, Sector 42, Chandigarh. It is submitted that the victim, in her version during Examination-in-Chief, has mentioned the name of the petitioner as said driver; as such there is direct evidence available against the petitioner. Regarding the non-mentioning of the name of

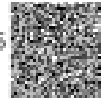
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the petitioner by the victim at the time of investigation of the case, it is submitted that the statement of the victim to the police or under Section 164 of Cr.P.C. can not be expected to be the encyclopedia of the prosecution's case. The explanation qua the name of the petitioner as the driver of the car in Court is a natural circumstance and cannot be saddled with the taint of improvement in her initial version. With these submissions, the dismissal of the criminal revision petition is prayed for.

8. I have heard the learned counsel for the petitioner as well as the State and have gone through the entire record of the case carefully.

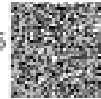
9. Perusal of the statement of the victim recorded under Section 164 of the Cr.P.C. makes it amply clear that she has neither named the petitioner nor mentioned him as a friend of the main accused, Irfan. The sum and substratum of the statement of the victim under Section 164 of Cr.P.C. is that the accused Irfan took her forcibly in a car being driven by a driver who dropped them at Lake, Sector 42, Chandigarh and then simply went off. However, the father of the victim, while deposing as PW-1 in his Examination-in-Chief, stated that his daughter told him that accused Irfan, along with his friend Sadiq Mohd. (present petitioner) took his daughter forcibly in a car to the Lake. But the victim, in her Examination-in-Chief as PW-2, stated that when Irfan took her forcibly in a car, the car was being driven by his friend, probably named Sadiq, he dropped them at

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Sector 42 Lake and went off. This version of the victim makes it clear that she was not sure about the name of the driver, and the name mentioned by her was merely probable. She further stated that accused Irfan called Sadiq, who told him to take the victim to Hoshiarpur. This part of the statement of the victim is clearly an improvement of her earlier version, with the intent to incorporate the petitioner as an accused in the case. There is absolutely no explanation on the part of the prosecution as to why, despite having ample opportunity all through the investigation in the case, the victim did not mention the name of the petitioner as an alleged participant in the offence.

10. The acquittal of the main accused persons, namely Mohd. Rashid and Irfan Akhtar, by the trial Court vide judgment dated 10.12.2021, though issued after the passing of the impugned summoning order, and as such is not marred in view of the ratio of law laid down by the Hon'ble Supreme Court in the case of ***Sukhpal Singh Khaira*** (supra). However, it cannot be lost sight of as a material and clinching aspect of the case while deciding the holding of trial against the petitioner as an additional accused in the same case. The finding of acquittal recorded by the learned trial Court, after evaluating the merit of the entire prosecution evidence pressed in the case against the accused who faced trial, is the most relevant document to evaluate the existence of a test of more than a *prima facie* case against the petitioner. It is pertinent that the allegation

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against the petitioner involves only a minuscule involvement in tandem with the main accused, who allegedly played a major role in the incident. This does not require separate evidence against the main accused to be led by the prosecution. Therefore, the allegations against the petitioner hinge upon evidence, that has already been evaluated by the trial Court vide judgment of acquittal. The said judgment can safely be relied upon to evaluate the involvement of the petitioner in standing trial as an additional accused.

11. In the case of **Vikas Rathi vs. State of U.P. & Anr., 2023(2) RCR (Criminal) 55**, the Hon'ble Supreme Court, while dealing with the situation where during the pendency of adjudication of issue regarding summoning of a person as an additional accused, trial in main case has resulted in acquittal qua other accused, held as under:

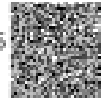
“13. The aforesaid material was not sufficient if examined in the light of the law laid down by this Court for summoning of an additional accused in exercise of power under section 319 of the Cr.P.C., 1973 to establish complicity of the appellant in the crime.

14. After conclusion of the entire evidence and examination of the material produced on record even against the charged accused, the trial Court had acquitted them vide judgment dated 15.03.2017. It shows that material produced on record was not even sufficient for conviction of the accused against whom chargesheet was filed.”

12. Hon'ble Supreme Court in the case of **Jhuru & Ors vs. Karim & Anr., 2023 AIR (SC) 1160**, held as under:

“16. In Sukhpal Singh Khaira (Supra), the Constitution Bench refreshed the guidelines that the competent Court must follow while exercising power under Section 319 Cr.P.C., 1973 It was ruled that:-

(i) if the competent Court finds evidence or if application under Section 319 Cr.P.C., 1973 is filed, regarding involvement of any other person in committing the offence based on evidence "recorded at any stage in the trial" before passing of the order on acquittal or sentence, it shall pause the trial at that stage and the Court shall proceed to decide the fate of the application under Section 319 Cr.P.C., 1973;



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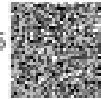
(ii) if the Court decides to summon an accused under Section 319 Cr.P.C., 1973 such summoning order shall be passed before proceeding further with the trial in the main case and depending upon the stage at which the order is passed, the Trial Court shall apply its mind to the fact as to whether such summoned accused is to be tried along with other accused or separately; and

(iii) if the power under Section 319 Cr.P.C., 1973 is not invoked or exercised in the main trial till its conclusion and if there is a split-up case, such power can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split-up (bifurcated trial).

17. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C., 1973 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., 1973 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., 1973 ought not to be invoked.”

13. The case of the petitioner viz-a-viz the main accused persons charged in the present case, who already stand acquitted by the trial Court, can be analysed in the light of the judgment passed by a Division Bench of this Court in the case of ***Sudo Mandal @ Diwarak Mandal vs. State of Punjab, 2011(2) RCR (Criminal) 453***. In the said case, the Court, while allowing the criminal appeal filed by the convicted accused and acquitting him, relied upon the evidence led by the prosecution in the trial against him alone, while quashing the entire criminal proceedings against the other three accused in the case, who were proclaimed offenders. The Division Bench of this Court held as under:

“22. While disposing of these two appeals, we are very much concerned about the absconding village rustic accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal, who had successfully evaded the



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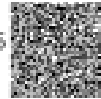
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dragnet of the police. The Investigating agency has put up a case implanting eye witnesses as against all the accused. Both the eye witnesses projected by the prosecution had not passed the test of trustworthiness. Their own showing would go to establish without any pale of doubt that they could not have witnessed the occurrence. The other materials produced by the prosecution also did not advance the case of the prosecution any further. The above facts and circumstances have persuaded us to come to a definite conclusion that the accused in this case were not the perpetrators of crime of murder as alleged by the prosecution. The same set of materials would be produced before the Sessions Court on production of the remaining three accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal. After all the poor innocent labourers had migrated to other places to eke out their livelihood. The appellants herein had in fact suffered imprisonment for such a long time leaving behind their kith and kin, who might have been in dire need of financial support and help from them. Such an unpleasant situation shall not be created for the other three accused against whom also there is no material on record to fasten them with the charge of murder. We seriously pondered over rendering judicial succour to those faceless and voiceless accused who had taken to heels and hidden themselves apprehending the wrath of criminal proceedings for the heinous crime of murder. We are convinced that our judicial arm is not so crippled as to betray the vague hope of the hopeless.

23. We are conscious of the fact situation that those three accused namely Radha Mandal, Rajiya Mandal and Sambodh Mandal had absconded and were declared as proclaimed offenders. They had not faced the trial, but when we find that no case could be made out as against them also with the very same rickety materials, those accused also will have to be relieved of the impending pain of facing the prosecution for murder. Section 482 of the Code of Criminal Procedure reads as follows :-

"Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

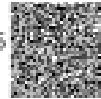
14. Perusal of the judgment of acquittal dated 10.12.2021 passed by the trial Court against the main accused who faced trial shows that the trial Court disbelieved the version of the victim in view of the material discrepancies and improvements in her version. The trial Court noted that the victim in her Examination-in-Chief, stated that prior to the incident, she did not know the accused Irfan. Whereas, in her cross-examination, she admitted to having photographs with the accused Irfan, reflecting the intimacy of the relationship shared by them. The learned trial Court further held that

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the victim claimed that on the date of the incident, when the accused Irfan allegedly took her forcibly in a car, she was blackmailed by him to come downstairs from her house at night while demanding money. However, the victim did not disclose in any of her statements before the police, or the Magistrate Court and even the Investigating Officer was not able to unearth the reason for the alleged demand for money by the accused or the amount of money involved during the entire investigation proceedings. The Trial Court further held that the victim herself stated that from 09.10.2017 to 13.10.2017, she along with the accused Irfan were commuting by auto, bus, and train and in such circumstances, she had ample opportunity to raise an alarm for help. She herself never sought assistance, which she could have obtained if she herself had desired it.

15. The above findings returned by the learned trial Court in the case against the main accused also discredit her version in the Examination-in-Chief against the present petitioner. The learned trial Court while passing the impugned order dated 25.07.2018, summoning the petitioner as an additional accused, in the case failed to appreciate that the allegations against the petitioner failed to meet the threshold of proving more than a *prima facie* case. The bald assertion by the victim in her Examination-in-Chief, wherein she stated that probably the name of the driver of car was Sadiq, which was clearly a materially improved version of her earlier statements in

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the case and does not make out any case against the petitioner to be summoned as an additional accused to face trial in the case.

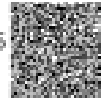
16. Hon'ble Supreme Court in the case of ***Achin Gupta vs. State of Haryana & Anr., 2024(2) RCR (Criminal) 880*** held as under:

“35. In one of the recent pronouncements of this Court in Mahmood Ali & Ors. v. State of U.P & Ors., 2023 SCC OnLine SC 950, authored by one of us (J.B. Pardiwala, J.), the legal principle applicable apropos Section 482 of the CrPC was examined. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 CrPC or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.”

17. The Constitution Bench of the Hon'ble Supreme Court in the case of ***Hardeep Singh vs State of Punjab and Others, 2014(1) RCR (Criminal) 623***, while dealing with the scope of applicability of the provisions of Section 319 of the Code of Criminal Procedure held 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

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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."

18. Coming to the facts of the present case, the evidence relied upon by the prosecution and the applications filed under Section 319 of the Cr.P.C. by the prosecution, seeking the summoning of the petitioner as an additional accused to face trial, clearly fall short of the test laid down by the Constitution Bench of Hon'ble Supreme Court. The prosecution except for the bald assertion on the part of the victim in her Examination-in-Chief regarding the probable involvement of the petitioner in the case, has failed to present any strong and cogent evidence pointing towards the involvement of the petitioner in the case. The case of prosecution fails to meet the requirement of more than a *prima facie* case as laid down by the Hon'ble Supreme Court. Moreover, in view of the acquittal of the main accused after the culmination of the trial by the trial Court, it would be an exercise in futility to make the petitioner face trial as an additional accused on the strength of the evidence which has already been disbelieved by the trial Court qua the main accused.

19. As a sequel to my above findings the present criminal revision petition is allowed, and the impugned order dated 25.07.2018 passed by the trial Court, under Section 319 of the

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Cr.P.C., summoning the petitioner as an additional accused to face trial in the case is set aside.

20. Pending application(s), if any, shall also stand disposed of accordingly.

(SUMEET GOEL)
JUDGE

November 04, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No