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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-1598-2023
Date of decision: 30.07.2024

Jxxx

...Petitioner

Versus

State of Haryana and others

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. S.S. Nain, Advocate
for the petitioner

Mr. Vikas Bharadwaj, AAG, Haryana
(On instructions from ASI Raj Kumar)

Mr. Saurabh Sharma, ADvocate for respondents No. 4, 5, 7 & 8.

HARPREET SINGH BRAR, J.(Oral)

1. The present revision petition has been preferred against order dated 02.06.2023 passed by the learned Additional Sessions Judge (Fast Track Special Court for Trial of Offences under POCSO Act), Nuh whereby application moved by the prosecution under Section 319 Cr.P.C., in FIR No. 453 dated 28.11.2019 registered under Section 363, 366-A, 212, 506 IPC and Section 4 of the Protection of Children from Sexual Offences, 2012 (hereinafter ‘the POCSO Act’) at Police Station Punhana, Nuh, has been dismissed.
2. Briefly, the facts are that the petitioner-complainant was receiving calls from various numbers by the accused, threatening to kidnap her minor daughter. On 26.11.2019, her minor daughter was in fact

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kidnapped by the accused. The prosecutrix remained with the accused for 17 days where she was repeatedly raped. On completion of investigation, the final report under Section 173 Cr.P.C. was filed against three of the accused. The prosecutrix was examined as PW2 and in her examination-in-chief, she named respondents No.2 to 8 to be complacent in the alleged offence as well. Thereafter, an application under Section 319 Cr.P.C. was moved to summon respondents No.2 to 8 as additional accused, which was dismissed vide impugned order dated 02.06.2023.

3. Learned counsel for the petitioner *inter alia* contends that the investigation agency has conducted a biased investigation as respondents No.2 to 8 were intentionally kept out of the purview of the investigation. The prosecutrix categorically named respondents No.2 to 8, while appearing as PW2. Moreover, the statement of the prosecutrix under Section 164 Cr.P.C. was dated 11.12.2019 (Annexure P-5) wherein she has stated that she left of her own accord, was recorded under the influence of the accused in the absence of any family members. Subsequently, the prosecutrix narrated the incident to her parents and a second statement dated 13.12.2019 (Annexure P-6) was recorded under Section 164 Cr.P.C., wherein she categorically named all the accused persons.

4. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the petitioner had named seven persons as accused in FIR(supra) and final report under Section 173 Cr.P.C. has been presented against three of them. *Learned State counsel*

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has informed the Court that respondent No.6 has passed away during the pendency of the present petition.

5. In her initial statement dated 11.12.2019 (Annexure P-5) under Section 164 Cr.P.C., the prosecutrix had indicated that she left with accused Taslim on her own accord as she was being forced to engage in sex work by her mother. The prosecutrix was medically examined on 11.12.2019 itself, wherein she mentioned that she was only raped by accused Taslim. It was only when she appeared before the Magistrate again on 13.12.2019 to record a second statement under Section 164 Cr.P.C. that she named respondents No.2 to 8.

6. The petitioner claims to be the eye-witness to the kidnapping incidents, however, she had named different persons as accused. As PW2, the prosecutrix named Saad, Moin and Rahul but not Musarraaf and Aadil, rather one Rahul was named for the first time. Since the narrative put forward by the prosecutrix remains in flux and respondents No. 2 to 8 were exonerated on investigation, which has also been verified by the DSP and the SIT, the learned trial Court has correctly dismissed the application of the prosecution under Section 319 Cr.P.C.

7. Discussing the scope of Section 319 Cr.P.C., a Constitution Bench of Hon'ble Supreme Court in case titled ***Hardeep Singh vs. State of Punjab 2014(1) RCR (Criminal) 623***, speaking through Justice B.S. Chauhan, has observed as follows:

"105. Power under Section 319 Cr.P.C. is a discretionary and an



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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."

This ratio of law was reiterated by a two Judge bench of the Hon'ble Supreme Court in the case of ***Sagar Vs. State of Uttar Pradesh and another 2022(2) R.C.R.(Criminal) 344.***

8. Recently, a two Judge bench of the Hon'ble Supreme Court in ***Juhru and others vs. Karim and another 2023 AIR (Supreme Court) 1160*** examined the scope of section 319 Cr.P.C and speaking through Justice Surya Kant, observed as follows:

"17. 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



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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.”

9. Mere statement of the 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. As such, this power has 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.

10. In view of the above discussion, the present petition is dismissed and the impugned order dated 02.06.2023 passed by the learned Additional

Sessions Judge (Fast Track Special Court for Trial of Offences under POCSO Act), Nuh , is upheld.

11. Pending miscellaneous application(s), if any, shall also stand disposed of.

30.07.2024

Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No