

CRR-1050-2021 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-1050-2021 (O&M)
Date of decision: 24.04.2024

SANGEETA

... PETITIONER

V/s

STATE OF HARYANA & ANOTHER

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Kapil Aggarwal, Advocate for petitioner.

Ms. Priyanka Sadar, AAG, Haryana.

Mr. Arav Gupta, Advocate for respondent No.2.

SUMEET GOEL, J.

1. Challenge in this criminal revision petition is made to the order dated 02.09.2021 passed by learned Additional Sessions Judge, (Fast Track Court) Panipat, in an application under Section 319 of the Criminal Procedure Code, filed by the complainant and duly forwarded by the learned APP for the State. The instant revision petition, qua respondent No.3 was withdrawn vide order dated 22.09.2021 earlier passed by this Court.

2. Facts germane to the dispute involved in the present case are that the complainant lodged an FIR bearing No.99 dated 09.09.2019, registered at Police Station Bapoli, District Panipat, under Sections 120-B, 328, 376, 384, 506 IPC against three persons namely Ajay, Suman and Sumer.

3. Accused-Ajay is cousin of her husband, accused-Sumer is the father-in-law of complainant and accused-Suman is her sister-in-law who is married to Rakesh. The allegations in the FIR are that the complainant got married to Anil son of Sumer on 03.11.2014. She started living with her husband in Village Mundri, Tehsil Pundri, District Kaithal. After three months of marriage, she came to know that her husband is a drug addict. On 30.04.2019 her husband was admitted to de-addiction centre Ambala. On 6th and 7th day thereafter, she got a call from Ajay, who wanted to meet her but she snubbed him.

4. In June, 2019 during summer vacations she visited her parents' home. On 26.06.2019 she got a call from her father-in-law that his nephew accused-Ajay would come to pick her up. Accused-Ajay after picking her from her house told that he had some errand at Panipat and that they will pick her children later, he took her to Panipat. He took her to Surya Hotel, Panipat, gave her cold drink to drink, after drinking the same she became inebriated and the accused-Ajay raped her. He threatened her that if she told about the incident to anyone, he will make her indecent photographs viral on internet. She stated that thereafter, the accused blackmailed her and sexually exploited her multiple times. On 31.08.2019 complainant sternly rebuked the accused-Ajay and told her not to visit her again, otherwise she will narrate everything to her father-in-law. Upon this the accused-Ajay told her that he had clicked her photographs, so that her father-in-law and sister-in-law could throw her out of the home. On 01.01.2019 when she narrated the entire story to her father-in-law, he told her that he knew about everything and proclaimed that the entire conspiracy in this regard was hatched by sister-in-law of the

complainant, who also came there and accepted the same. Thereafter, she was thrown out of the house by her father-in-law.

5. During the course of investigation the police arrested the accused Ajay; accused Sumer and Suman i.e. father-in-law and sister-in-law of the complainant were found innocent and Section 120-B, IPC was dropped from the FIR by the Police in the Final Report under Section 173 of Cr.P.C. filed in court against accused-Ajay while adding Section 376(2)(n) of IPC to the case. During trial charges under Sections 328, 376(2)(n), 384 and 506 were framed against the accused-Ajay on 31.10.2019. Thereafter, prosecution examined Complainant as witness in the case on 19.07.2021 and her Examination-in-Chief was recorded. Then the prosecution moved an application under Section 319 of Cr.P.C. for summoning accused Sumer and Suman i.e. father-in-law and sister-in-law of the complainant as additional accused in the case. The said application was dismissed by the learned Trial Court vide order dated 02.09.2021, which is challenged in the present criminal revision petition.

6. Learned counsel for the petitioner has challenged the order dated 02.09.2021 passed by the learned Trial Court in line with his averments on the grounds pleaded by him in the criminal revision petition. It is averred that the father of the complainant died 1 month prior to her marriage with Anil son of accused-Sumer. At that time it was not disclosed that the husband of the complainant is a drug-addict and two children i.e. a son and a daughter were born out of the wedlock of the complainant with Anil. It is argued that accused-Ajay raped the complainant against her wishes and took her objectionable photographs, on the strength of which he blackmailed and repeatedly raped her. It is argued that the entire incident of rape upon the

complainant was committed by accused-Ajay in connivance with accused Sumer and Suman, respondents Nos.2 and 3 respectively in this petition. It is argued that respondent No.2 being master mind of the incident of rape with the complainant-petitioner had objectionable photographs of the petitioner in his mobile and made them viral. It is argued that in case the mobile phone of the respondent No.2 is taken in custody by police and examined by FSL, then it would reveal that the objectionable photographs of the petitioner were made viral by the respondent No.2.

7. To the contrary on behalf of the accused-respondents it is argued that the application filed under Section 319 is bereft of any merit as the statement of prosecutrix is nothing but reiteration of her complaint given to the police. No case is made out to summon the respondents as additional accused, through the statement of complainant in her Examination-in-Chief, as it falls short of the requirement of ingredients of Section 319 Cr.P.C. It is further argued that the relationship between the petitioner and accused-Ajay was consensual, which is later on given colour of rape of offence by the petitioner with ulterior motive. It is argued that the petitioner while appearing as PW-2 has tried to improve her version by levelling allegation that respondent No.2 used to keep evil eye on her. The said allegation was levelled by the petitioner for the first time in her Examination-in-Chief, as it does not find mention in her statement under Sections 161 and 164 of Cr.P.C.

8. After hearing the learned counsel for the parties and going through the case record it is apparent as is clearly discernible from record of the case that the complaint made by the complainant was thoroughly probed by the police and thereafter, challan was presented against accused-Ajay. The

respondent Nos.2 and 3 were found innocent as nothing incriminating was found against them by the police during investigation. The matter was again investigated on the request of the petitioner by police, wherein again the respondent Nos.2 and 3 were found innocent and nothing incriminating had come against them on record of the case. The petitioner thereafter, filed a criminal miscellaneous petition before this Court seeking direction to the police for further investigation of the case. The said petition of the petitioner was disposed of by this Court with a direction to Superintendent of Police, Panipat to look into the grievances of the petitioner. Thereafter, a Special Investigation Team comprising of DSP Law and Order, Panipat; SHO P.S. Bapoli; and a L/S.I. of Police Line, Panipat was constituted to probe the allegations of the petitioner. Even this SIT had found the respondent Nos.2 and 3 innocent in the matter.

9. Section 319 of the Code of Criminal Procedure prescribes that where during trial, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the court may proceed against such person for the offence which he appears to have committed.

10. Constitution Bench of Hon'ble Supreme Court of India, in case of ***Hardeep Singh versus State of Punjab and Others, 2014(1) RCR (Criminal) 623***, while laying down the standard of evidence required under section 319 of Cr.P.C. held as under:

“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 unrebutted, 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."

11. In the present case, the evidence (Examination-in-Chief) of the petitioner, when read in the light of the above ratio of law laid down by the Hon'ble Supreme Court, it clearly fails to withstand the requirement of more than prima facie case nature. The testimony of the petitioner in her Examination-in-Chief is only reiteration of her earlier version in the shape of her complaint to the police, which was thoroughly probed by the police multiple times, even by constituting an SIT, in pursuance of the order passed by this Court, in a petition filed by the petitioner in that regard. Moreover, the argument on behalf of the petitioner that in case the mobile phone of the respondent No.2 is taken in custody by police and examined by FSL, then it would reveal that the objectionable photographs of the petitioner were made viral by the respondent No.2 is clearly outside the ambit and scope of the

Section 319 of the Cr.P.C. It is pertinent that while exercising the power under Section 319 of Cr.P.C. the Court is required to proceed on the basis of evidence brought before. The court is not vested with power under Section 319 of Cr.P.C. to collect the evidence or to conduct a roving enquiry on behalf of the petitioner.

12. The Hon'ble Supreme Court of India in case of *N. Manogar & Anr. Versus The Inspector of Police & Ors., 2024 INSC 130*; Law Finder Doc Id #2502352, held as under:

“9. In the present case, the High Court overturned the Trial Court Order; and accordingly impleaded the Appellants' as accused person(s) in the Underlying Proceedings on the satisfaction of a prima-facie finding that the materials on record i.e., (i) vague allegations emanating from the underlying complaint; (ii) the Complainant's statement under Section 161 of the CrPC, 1973; and (iii) the Complainant's Examination-in-Chief, are sufficient to proceed against the appellant(s).

10. In our considered view, the approach adopted by the High Court was not in consonance with this Court's opinion in Hardeep Singh (Supra). The High Court failed to appreciate that the discretionary powers under Section 319 of the CrPC, 1973 ought to have been used sparingly where circumstances of the case so warrant. In the present case, the Trial Court order was well reasoned and did not suffer from any perversity. Moreover, the materials on record could not be said to have satisfied the threshold envisaged under Hardeep Singh (Supra) i.e., more than

a prima facie case, as exercised at the time of framing of charge but short of evidence that if left unrebutted would lead to conviction.”

13. The Hon’ble Supreme Court of India in case of ***Juhru v. Karim***, (2023) 5 SCC 406 has held as under:

“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.”

14. The innocence of the respondent Nos.2 and 3 in the case as has been upheld by the thorough investigation of the allegations of the petitioner by the police, multiple times, cannot be tinkered with in a casual manner. The power under Section 319 of the Cr.P.C. being an extra-ordinary power cannot

be invoked in a casual manner. The Hon’ble Supreme Court of India in Hardeep Singh’s case (supra) held:

“Power under Section 319 Cr.P.C. is a discretionary and an extra- ordinary 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.”

15. In view of the above discussed facts and circumstances of the case, I do not find any illegality, infirmity or legal perversity in the impugned order dated 02.09.2021 passed by the learned Additional Sessions Judge, (Fast Track Court), Panipat. Consequently the order dated 02.09.2021 is upheld. The present criminal revision petition filed by the petitioner is dismissed.

(SUMEET GOEL)
JUDGE

April 24, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No