

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRR No.1712 of 2023
Date of decision: 16.01.2024

“R” ... Petitioner

Vs.

State of Haryana and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Shiv Kumar Rana, Advocate,
for the petitioner.

Mr. Arjun Lakhanpal, Addl. AG, Haryana.
for the respondent-State.

MANISHA BATRA, J.

1. The petitioner herein is seeking quashing of order dated 14.07.2023 as passed by the Court of learned Additional Sessions Judge, Special Court, Kaithal whereby an application for summoning four persons namely, Mohinder, Kelo Devi, Seema and Sohan Lal as additional accused in Sessions Case bearing CIS No.SC/152/2022 titled as *State of Haryana v. Deepak* arising out of FIR No.99 dated 09.04.2022 registered under Sections 120-B, 376 (2) (n), 406, 420 and 506 of IPC at Police Station Kalayat, District Kaithal, been dismissed.
2. The facts relevant for the purpose of disposal of this petition are that the aforementioned FIR had been registered on the basis of

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complaint submitted by the “R” (name withheld) alleging that her husband had died on 12.05.2021 and her brother-in-law Deepak had cheated her by withdrawing the amount of compensation from her account by procuring her signatures in a fraudulent manner. Accused Deepak had extended beatings to her and committed rape upon her and had even threatened to eliminate her children and herself if she disclosed about this fact to anyone. The above named four persons who are father, mother, sister and husband of sister respectively of Deepak had supported him and forced the complainant to become wife of Deepak. As such, she prayed for taking action against them. During investigation, the accused Deepak had been arrested whereas the above named four persons had been found to be innocent and had not been arrested and challaned. Offence under Section 120-B of IPC was deleted. Challan was presented as against accused Deepak who is facing trial under Sections 376 (2) (n), 406, 420 and 506 of IPC. After recording statement of the complainant in chief, the complainant/prosecution had moved an application for summoning the above named four persons as additional accused which was dismissed by the learned Special Court vide the impugned order.

3. It is submitted in the revision petition and learned counsel for the petitioner has argued that the impugned order is not sustainable in the eyes of law and is liable to be set aside as ample evidence in the form of testimony of the petitioner had appeared on the record of the Special Court to prove that the proposed additional accused were also involved in

the fraud/cheating played by the accused Deepak in transferring her money fraudulently in their account. They were specifically named in the FIR. The challan report was filed against the accused already arraigned only and the proposed accused were wrongly declared to be innocent. The learned Special Court without considering all these facts, had erred in dismissing the application. Therefore, he has urged that the present revision petition deserves to be allowed and the above named four persons are liable to be arraigned and summoned as additional accused to face trial along with the accused Deepak already facing trial.

4. The respondent-State has filed status report submitting therein that after conducting thorough investigation in the matter, the proposed accused were found to be innocent and that is why they had not been arrested and challaned.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have carefully gone through the material which has been placed on record.

6. Section 319 of Cr.P.C. empowers the Court to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with other accused. The principle of law with reference to exercise of jurisdiction under this Section has been well settled by the Constitution Bench of Hon'ble Superme Court in a celebrated pronouncement cited as **Hardeep Singh and others Vs. State of Punjab and others**, (2014) 3 SCC 92, wherein

it was observed that the power under Section 319 Cr.P.C. is discretionary and an extraordinary power. It has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. 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 material placed before the Court that such power should be exercised and not in a casual and cavalier manner. It was also observed 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 strong evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as has been established 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 of Cr.P.C.

7. Reference can also have made to a recent pronouncement of Hon'ble Supreme Court cited as **Sagar Vs. State of UP and another**, (2022) 6 SCC 389 wherein the Apex Court observed as under:-

“ 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 notice above has to be applied is one which is more

that 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....”

8. It is also well settled proposition of law that an order under Section 319 of the Cr.P.C. should not be passed only because the first informant or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be assigned by the Court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. The evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction and for this purpose, the Courts are required to apply stringent tests, one of such tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

9. On applying the above discussed principles of law to the peculiar facts and circumstances of the case, it emerges that though undoubtedly the names of the proposed accused had been referred to in the FIR. However, a perusal of the contents of the same simply reveal that the only allegation that had been levelled against them by the petitioner were that they had been supporting the accused Deepak and had been forcing her to become his wife. On a perusal of her statement as recorded by the petitioner under Section 164 of Cr.P.C. on 10.04.2022, she is shown to have stated that she had received an amount of compensation on account of death of her husband due to electrocution

but all that money including her widow pension was grabbed by the accused Deepak. She also alleged that on 23.02.2022 Deepak had committed rape upon her and had been extended threats to kill her. She is not shown to have uttered even a single word qua the involvement of the proposed accused with the crimes alleged to be committed by the accused Deepak. The allegations in FIR that an amount of Rs.50 lacs was grabbed by the accused Deepak by procuring her signatures fraudulently and misleading her and by withdrawing it from her bank account are also only with regard to him. The allegation that the proposed accused were supporting him and threatening her that she would be allowed to live there only in the way in which the accused Deepak wanted, cannot be stated to be allegations of such nature on the basis of which, it can be stated that the proposed accused had complicity in the crime for which the accused Deepak is already facing trial. The proposed accused had been found to be innocent after conducting thorough investigation by the police and their names were then kept in Column No.2 of the challan report. No evidence what to say some stronger evidence of such nature has come on record in the form of testimony of the petitioner on the basis of which possibility of complicity of the proposed accused in commission of the subject offences can be presumed. The allegations as levelled against them are general and vague in nature. Casual reference of their names without referring to the part specifically attributed to them by saying that they were supporting the accused Deepak, would not justify taking any cognizance against them in my opinion, especially keeping in

view that in such like matters, there is a tendency to involve all the family members of the household by the side of the victim. In the absence of any specific instances of the involvement of the proposed accused in the crime for which the accused Deepak is facing trial, I do not find any reason to take a view other than the one that had been taken by the learned Special Court. Accordingly, finding no ground to interfere, the petition is dismissed.

16.01.2024

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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No