

**CRR-2065-2022(O&M)**

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH****CRR-2065-2022(O&M)
Date of Decision: 27.08.2024****KAMALJEET****...Petitioner****V/S****STATE OF HARYANA AND ANOTHER****...Respondents****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR****Present: Mr. S.K. Tripathi, Advocate
For the petitioner.****Mr. Vikas Bhardwaj, AAG, Haryana****None for respondent no.2 (despite service)************HARPREET SINGH BRAR J.(ORAL)****CRM-37401-2022**

Prayer in this application for condonation of delay of 121 days
in filing the accompanying revision petition.

For the reasons mentioned in the application, the same is
allowed and delay of 121 days in filing this revision petition stands
condoned.

CRR-2065-2022

1. The instant revision petition has been preferred against the
impugned order dated 10.11.2021 passed by learned Additional Sessions
Judge, Panchkula vide which the petitioner has been summoned as an
additional accused by allowing the application filed by prosecution under
Section 319 of Cr.P.C. in the case arising out of FIR No.56 dated 23.04.2019

registered under Section 6 of the Protection of Children from Sexual



Offences Act, 2012 (hereinafter referred to as POCSO Act) at Women Police Station- Panchkula.

2. Succinctly, facts of the case are that father of the prosecutrix lodged the FIR (supra), wherein, it has been alleged that his daughter (prosecutrix) aged about 14 years and a student of 8th standard was taken to a vacant house and sexually exploited by the main accused namely Ram Singh @ Bajrang on 22.04.2019. It was also revealed by the prosecutrix that Ram Singh @ Bajrang had been sexually exploiting her since 14.01.2019. Consequently, Ram Singh @ Bajrang was summoned to face trial in the case arising out of FIR (supra). However, the prosecution filed an application under Section 319 Cr.P.C. seeking summoning of two more persons, including the present petitioner, as additional accused on the ground that they had also been named by the prosecutrix as well as her mother in their deposition. The said application was allowed and the petitioner was summoned as an additional accused to face trial along with Ram Singh @ Bajrang. Aggrieved, he has approached this Court by way of the present petition.

3. Learned counsel appearing for the petitioner inter alia contends that role or complicity of the petitioner finds no mention either in the FIR lodged by the father of the prosecutrix or the statement of the prosecutrix recorded under Section 164 Cr.P.C. He further contends that name of the petitioner was unscrupulously mentioned for the first time during the examination of the prosecutrix and her mother before the learned trial Court. While challenging the legality of the impugned order, he submits that the same has been passed in a perfunctory manner which is against the settled



4. Learned state counsel submits that the mother of the prosecutrix was examined as PW-1 and the prosecutrix was examined as PW-3 and both of them categorically deposed before the learned trial Court regarding involvement of the petitioner. He submits that since the complicity of the petitioner has been specifically mentioned by the prosecutrix, sufficient ground existed for summoning the petitioner to face trial along with the main accused.

5. I have heard the learned counsel for the parties and perused the material available on record. It transpires that the petitioner has neither been named in FIR (supra) which was lodged on 23.04.2019 nor in the statement of prosecutrix recorded on 23.04.2019 before the Legal Aid Counsel (Annexure P-2) nor in her statement recorded under 164 Cr.P.C. on 23.04.2019 (Annexure P-3). A day later, i.e., on 24.04.2019, the complainant (father of prosecutrix) also made a statement under Section 161 Cr.P.C. (Annexure P-4) but name of the petitioner finds no mention therein. In addition, the petitioner has not been arrayed as an accused in the police report filed under Section 173 Cr.P.C. The petitioner has been named for the first time in examination-in-chief of the mother of the prosecutrix (PW-1) on 19.10.2019 and thereafter, in the examination-in-chief of the prosecutrix (PW-3) on 15.03.2021, i.e., after a delay of 6 months from the date of FIR (supra). It is bemusing that during these 6 months, no complaint was made before the concerned police against the petitioner. Furthermore, in their deposition, the prosecutrix and her mother have failed to mention any specific details qua the complicity of the petitioner and only bald allegations have been levelled against him therein. It is quite astonishing that



the petitioner at all the crucial stages of investigation despite nature of allegations being similar to the ones against the main accused.

6. At this juncture, it is pertinent to discuss the perspicuous observations made by the Hon'ble Supreme Court in some of its recent judgements. Discussing the scope of Section 319 Cr.P.C., the Constitution Bench of Hon'ble Supreme Court in case titled **Hardeep Singh Vs. State of Punjab, SC 2014(1) RCR (Criminal) 623** has laid down that:

"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 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."

7. 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."

8. 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.”

9. Reverting back to the facts of the case, it comes to the fore that explanantion given by the prosecutrix and her mother during their respective cross-examination for not naming the petitioner initially is also quite unpalatable. It has been stated therein that name of the petitioner was disclosed to the police official, the concerned magistrate as well as the doctor who medico-legally examined the prosecutrix but for some reason all of them, out of some sinister plan, failed to array the petitioner as an accused. These bald allegations in the respective statements of prosecutrix-PW3 and her mother-PW1 do not inspire confidence of this Court in the prosecution case. Therefore, this Court is inclined to observe that there is lack of cogent evidence which can establish more than prima facie case against the petitioner.

10. In view of the discussion made hereinabove, the present

does not satisfy the test of more than prima facie case as enunciated in *Hardeep Singh (supra)*.

11. Hence, the impugned order dated 10.11.2021 passed by learned Additional Sessions Judge, Panchkula, is hereby, set aside.

12. Needless to say, anything observed by this Court hereinabove is only for purpose of deciding the present revision petition. Learned trial Court is, therefore, directed to proceed with the case at hand on its own merits.

27.08.2024

Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No