

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

**CRR No. 348 of 2022 (O&M)
Date of decision: 28.02.2024**

Krishan Kumar **...Petitioner**
Versus

State of Haryana and another **...Respondents**

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Suryakant Gautam, Advocate
for the petitioner.

Mr. Neeraj Poswal, AAG, Haryana.

Mr. Ravinder Hooda, Advocate
for respondent No. 2.

MANISHA BATRA, J. (Oral)

1. This revision petition has been filed by the petitioner against the order dated 12.10.2021, passed by the trial Court in case bearing No. SC/42/1035/97/2020, titled as State vs. Ashish, arising out of FIR No. 22 dated 21.01.2020, registered under Sections 120-B, 34, 341, 354-C, 376, 506 of the IPC; Sections 17 and 4 of the POCSO Act, 2012 and Section 67-B of the Information Technology (Amendment) Act, 2008 at Police Station I. M. T., Rohtak, District Rohtak, whereby an application, filed by the complainant under Section 319 Cr.P.C. for summoning Priyanka as additional accused to face the trial, has been dismissed.
2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered against accused Ashish on the basis of a written complaint filed by the petitioner/complainant

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alleging therein that his daughter 'S' (*name withheld*) is a minor. Accused Ashish has been residing in their neighbourhood. On one day, while the victim was alone at home and was taking bath, then accused Ashish came on the roof of their house through roof of the neighbours and had made a video of his daughter through his mobile and thereafter, by showing photographs and videos so taken, he had started blackmailing her daughter and harassing her every day. He further alleged that even Priyanka, who is sister-in-law of the petitioner, had joined the petitioner and started extending threats to make her videos viral, if she did not abide by the accused Ashish. The complainant alleged that by extending such threats, the accused Ashish and his sister-in-law had made one more video of the victim and had been extending threats to her to upload the same on the internet. He alleged that his daughter was studying in 10th Class but while noticing that she has lost interest in studies and opted to remain confined in the house itself, his wife had made probe and then the victim had disclosed about the above mentioned facts to her mother and had also disclosed that accused Ashish had committed rape upon her in the connivance with and on the instigation/abetment made by his sister-in-law. The aforementioned FIR was registered on the basis of the complaint so filed. Investigation proceedings were initiated. Aforesaid Priyanka, sister-in-law of the main accused Ashish, was found innocent during investigation. Accused Ashish was arrested on 21.01.2020. He was interrogated and during investigation, he suffered disclosure statement to the effect that co-accused Sumit and Deepak had also captured the vulgar acts as committed by him with the prosecutrix through their mobile phones and even he had shared those vulgar videos with the aforesaid accused and, therefore, they were also

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arrested. After completion of necessary investigation and usual formalities, *challan* under Section 173 Cr.P.C. was presented in the Court and presently, the accused Ashish along with the co-accused is facing trial for commission of aforementioned offences.

3. Learned counsel for the petitioner has argued that the trial Court has wrongly dismissed the application filed by him under Section 319 Cr.P.C. without appreciating the material available on record. The trial Court has ignored the fact that there were direct and specific allegations against the proposed accused in the FIR, which stood corroborated by the statements of the victim recorded under Section 164 Cr.P.C. as well as her sworn deposition recorded in the Court. It is, therefore, prayed that the present petition deserves to be allowed and the impugned order is liable to be set aside.

4. Learned State counsel has not disputed the factual position and has supported the contentions of learned counsel for the petitioner. However, learned counsel for the proposed accused has argued that she was found innocent during trial as there was no evidence against her and the trial Court has rightly dismissed the application filed by the petitioner under Section 319 Cr.P.C. Hence, he has argued that the present petition is liable to be dismissed.

5. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record carefully.

6. Before proceeding further, it would be proper to have a look at Section 319 Cr.P.C., which reads as under:

“Where, in the course of any inquiry into, or trial of, an offence, 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....”

7. The Constitution Bench of Hon’ble Supreme Court in ***Hardeep Singh vs. State of Punjab and others : AIR 2014 SC (Criminal) 561*** has held that 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. In a recent judgment rendered by Hon’ble Supreme Court in ***Sukhpal Singh Khaira vs. State of Punjab : (2023) 1 SCC 289***, it is held that the power bestowed on the Court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the Court, if it appears to the Court that such evidence points to any person other than the accused who are being tried before the Court to have committed any offence and such accused has been excluded in the charge sheet or in the process of trial till such time could still be summoned and tried together with the accused

for the offence which appears to have been committed by such persons summoned as additional accused.

8. Now the question that arises before this Court for consideration is that as to whether in view of the provisions of Section 319 Cr.P.C. as well as ratio of law as laid down by Hon'ble Supreme Court in aforecited judgments, if there is *prima facie* evidence which points that the proposed accused Priyanka has committed any offence for which she could be tried together with accused Ashish and other co-accused ? In the considered opinion of this Court, the answer to this question is in affirmative, for the reasons given the paragraphs that follow.

9. During the course of trial, the sworn deposition of the prosecutrix was recorded and while appearing as PW-1, she is shown to have stated that on 12.09.2019, she was alone in her house and was taking bath in her bathroom. When she sensed that somebody was watching her but while thinking that it was just her misconception, she ignored it. She further alleged that on the very next day i.e. 13.09.2019, the proposed accused Priyanka, who is sister-in-law of the accused Ashish facing trial for commission of aforementioned offences, had come to her house and called her out and disclosed her that they had made her obscene videos while she was taking bath. On hearing this, the prosecutrix requested her to delete the same and then the proposed accused told her that they would do so if she agreed to record another video as per their wishes. On this excuse, the proposed accused took the victim to her house, wherein accused Ashish was already present and he tried to commit rape upon her. The victim had raised hue and cry but her mouth was gagged by the accused and thereafter, after pushing her on a bed,

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the proposed accused went out of the room by bolting it from the outside and stood as guard, whereas accused Ashish committed penetrative sexual assault upon her. She is also shown to have alleged that the accused and the proposed accused had been extending threats to eliminate her family members and herself and to make her videos viral on the internet. It is also alleged by her that co-accused Deepak and Sumit had also recorded her videos. The trial Court, while dismissing the application for summoning the aforesaid Priyanka as additional accused, had observed that the facts as mentioned by the father of the victim in his complaint were not in consonance with the statement as recorded by the victim and also that no exact time, date, month and year of commission of the subject offences had been mentioned in the complaint. However, on a careful perusal of the allegations in the FIR, the statement of the prosecutrix as recorded under Section 164 Cr.P.C. as well as her sworn deposition recorded by way of examination-in-chief before the trial Court, this Court is of the considered opinion that the order passed by the learned Additional Sessions Judge is not sustainable and is liable to be reversed as he has not appreciated the material placed on record in the form of testimony of the victim as well as her statement recorded under Section 164 Cr.P.C. in a proper perspective.

10. No doubt, in the complaint as lodged by the father of the victim, the details of all the facts, as have been mentioned in the statement of the victim under Section 164 Cr.P.C. as well as in her sworn deposition, have not been mentioned but the complainant himself was not the victim and he has recorded the FIR on the basis of the information received from his daughter as well as wife. It is well settled proposition of law that an FIR is not

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encyclopedia and all the minutest details are not required to be mentioned in the same. So far as the statements of the victim as recorded during the course of investigation and by way of her sworn deposition are concerned, the same are prima facie sufficient to prove the complicity of the proposed accused Priyanka in not only abetting the act of penetrative sexual assault by accused Ashish upon the victim but also wrongfully confining the victim and criminally intimidating her in connivance with the main accused. The allegations make out a clear cut case of the involvement of the proposed accused in the offences, for which, accused Ashish is facing trial along with other co-accused and also qua commission of offence punishable under Section 4 read with Section 17 of the POCSO Act by her by abetting the offence of penetrative sexual assault.

11. Accordingly, with the aforesaid observations, the impugned order is set aside. The revision petition is allowed and the proposed accused Priyanka, who is respondent No. 5 to this petition (*before deletion of respondent Nos. 2 to 4 from the array of parties*), is ordered to be summoned as an additional accused with direction to face trial along with the accused already arrayed.

12. However, it is made clear that any observation made herein above shall have no bearing on the merits of the case as the same are only for the purpose of deciding the present petition.

28.02.2024

(MANISHA BATRA)
JUDGE

Waseem Ansari/Parveen Sharma

Whether speaking/reasoned

Whether reportable

Yes/No

Yes/No