

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

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CRM-M No.49324 of 2023
Date of decision: 02.04.2024

Anil ... Petitioner

Vs.

State of Haryana ... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Sarun Hans, Advocate,
for the petitioner.

Mr. Arjun Lakhanpal, Addl. AG, Haryana.

MANISHA BATRA, J.

1. The instant petition under Section 482 of Cr.P.C. has been filed by the petitioner seeking quashing of order dated 03.07.2023 passed by the Court of learned Principal Magistrate, Juvenile Justice Board (For short “JJB”) in case arising out of FIR No.117 registered under Sections 363, 366-A and 342 of IPC and Sections 10 and 17 of Protection of Children from Sexual Offences Act, 2012 (For short “POCSO Act”) at Police Station Garhi, District Jind, whereby an application filed by the complainant under Section 319 of Cr.P.C. to summon the present petitioner had been allowed as well as the order dated 25.08.2023 passed by learned Additional Sessions Judge, Jind whereby, a revision petition No.10 of 2023 as filed by the petitioner against the order dated 03.07.2023 had also been dismissed.

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2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on the basis of statement recorded by the complainant "R" (name withheld) on 08.05.2022 alleging therein that on the same day, he along with his wife had gone for their work while leaving their three daughters including the victim (name withheld) who is their eldest daughter, at home. His father was also not present in the house at that time. Sometime thereafter, his father made a call to him intimating that the victim had gone missing from the house. On hearing so, the complainant along with his companions rushed for making search for her daughter and while they reached near the pavement of the canal of their village, they found two youths while taking away his daughter by making her sit in between themselves on a motor bike. He managed to stop them by throwing bricks over the motorcycle and then took over custody of his daughter. His daughter disclosed to him that the accused Ankush who was one amongst those two youths had forcibly taken her away from her house on a motorcycle and the second youth who was the present petitioner, had met them at the canal who had sat on the motor bike and caught hold of her from her back. They had taken her under the railway bridge of Narwana and had committed rape upon her and then they had been taking her somewhere else. On the basis of this statement, initially a case under Sections 323, 363, 366-A and 376-D of IPC and Section 6 of POCSO Act was registered. Investigation proceedings were initiated. During

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investigation, the present petitioner was found to be innocent and had not been arrested and challaned. His name was kept under Column No.2 of the challan report. Offences under Section 376-D of IPC and Section 6 of POCSO Act were deleted. The co-accused Ankush was arrested and is facing trial for commission of offences punishable under Sections 363, 366-A and 342 of IPC and Sections 10 and 17 of POCSO Act. During trial, the victim had appeared before the learned trial Court as PW-3 and had recorded her statement in chief. Thereafter, an application under Section 319 of Cr.P.C. was moved by the complainant for summoning the present petitioner as additional accused. Vide order dated 03.07.2023, this application was allowed and the present petitioner was directed to be arraigned as additional accused and was directed to face trial along with the co-accused and the said order was also affirmed by the revisional Court as discussed above.

3. It is submitted in the present petition and learned counsel for the petitioner has vehemently argued that the impugned orders as passed by the learned JJB and learned Additional Sessions Judge are not sustainable in the eyes of law and are liable to be set aside due to the fact that there are material inconsistencies between the statements of the prosecutrix herself as recorded during the course of investigation as well as in the Court which do not make out any case as for summoning the petitioner as additional accused. The victim had refused to get her medico legal examination conducted. No specific role and injury had been

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attributed to the petitioner. The police had conducted thorough investigation in the matter and had not found the complicity of the petitioner in the subject crime. The allegations qua the victim having been subjected to rape by the petitioner had been found to be false during investigation and that is why offences under Sections 376-D of IPC and Section 6 of POCSO Act were deleted. With these broad submissions, it is argued that the petition deserves to be allowed.

4. Learned State counsel who has advance notice of the petition has submitted that there is no infirmity in the orders passed by the Courts below and, therefore, it is urged by him that the petition does not deserve to be allowed.

5. I have heard learned counsel for the petitioner as well as learned State counsel at considerable length and have gone through the 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 Supreme 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 by Hon'ble Supreme Court that it is the duty of the Court

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to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the Court is not powerless in calling the said accused to face trial. Section 319 of Cr.P.C. springs out of the doctrine *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 of Cr.P.C. The Hon'ble Court further observed that the Court only has to see at the stage of Section 319, whether a *prima facie* case is made out although the degree of satisfaction has to be much higher. Such *prima facie* case is to be established from the evidence led before the Court, not necessarily tested on the anvil of cross-examination. 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 powers under Section 319 of Cr.P.C. Applying the proposition of law as laid down in the above cited celebrated judgment of Hon'ble Supreme Court to the peculiar facts and circumstances of the present case, I am of the considered opinion that no legal or factual infirmity can be found in the order passed by the learned JJB while summoning the present petitioner as an additional accused and the order passed by learned ASJ while affirming the findings of learned JJB. Undoubtedly, in her statement

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recorded in the Court, the victim is shown to have made certain improvements in her statement. However, her statement with regard to the complicity of the present petitioner in the commission of the similar offence for which the co-accused is facing trial cannot be discarded. It is worthwhile mentioning that the FIR was lodged by the father of the victim and not by the victim herself and, therefore, it cannot be stated that the statement made by her under Section 164 of Cr.P.C. being inconsistent to the allegations in the FIR lodged by her father levelling allegations of her being ravished, have falsified her version. The stand taken by the victim while recording her statements during investigation as well as in the Court on the point that she had been taken away from her house on a motorbike by the co-accused Ankush and then the petitioner had joined them and had committed wrong acts with her has remained consistent. The learned JJB and learned ASJ after considering this evidence had rightly come to a conclusion that a case for summoning the petitioner as additional accused had been made out. Accordingly, I see no reason to allow the petition. The same is dismissed.

02.04.2024

manju
Whether speaking/reasoned
Whether reportable

(MANISHA BATRA)
JUDGE

Yes/No
Yes/No