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

**CRR-2422-2023 (O&M)
Date of decision: 19.07.2024**

Gurpreet Kaur @ Gori

...Petitioner

Versus

State of Punjab and another

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. A.S. Manaise, Advocate
for the petitioner.

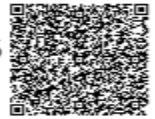
Mr. B.S. Chahal, Advocate for
Mr. Karanveer Singh, Advocate
for respondent No.2.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J.(Oral)

1. Present revision petition has been preferred seeking setting aside of order dated 13.09.2023 (Annexure P-6) passed by learned Additional Sessions Judge, Gurdaspur, whereby application moved by the prosecution under Section 319 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), in FIR No.22 dated 27.02.2023 under Sections 376, 34 of

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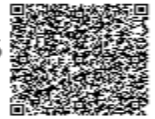
the Indian Penal Code, 1860 (for short IPC’) and Section 4 of the Protection of Children from Sexual Offences, 2012 (for short ‘POCSO Act’), registered at Police Station Sadar Gurdaspur, has been allowed.

2. Briefly, the facts as alleged, are that on 21.02.2023, daughter of the complainant, a 16 years old girl, was going to school on her scooter when the petitioner stopped her and asked her to take her to Gurdaspur. The victim dropped the petitioner in Dinanagar on her asking. On arrival, the victim found the petitioner’s brother namely Amrik Singh @ Gora present at the Dinanagar bypass with his motorcycle. Thereafter, the victim was asked to ride pillion on Amrik Singh @ Gora’s motorcycle by the petitioner and assured that she will follow them on the victim’s scooter. However, the petitioner did not follow them. Amrik Singh @ Gora took the victim to a hotel in Pathankot and raped her.

3. On investigation, the police found the petitioner to be innocent and the final report under Section 173 Cr.P.C. was filed against Amrik Singh @ Gora. Subsequently, the victim was examined as PW1 wherein she reiterated the allegations made in the FIR(supra). Thereafter, an application under Section 319 Cr.P.C. was moved to summon the petitioner as an additional accused, which was allowed vide impugned order dated 13.09.2023.

4. Learned counsel for the petitioner *inter alia* contends that at the

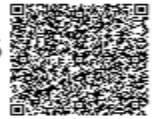
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time of the alleged incident, the petitioner was taking a class at the British Global Institute, Kahnuwan Road, Gurdaspur. The petitioner reached the institute at 10:06 AM and left the same at about 4:36 PM, while the alleged incident took place around 3 PM. In fact, the investigating agency also checked the CCTV footage of the cameras installed on the Gurdaspur-Dorangala road to ensure the location of the petitioner at the time of the alleged incident. The investigating agency, after duly verifying the CCTV footage, had declared the petitioner to be innocent vide Rapat No. 13 dated 13.03.2023. The petitioner has only been implicated because she is the cousin of the main accused Amrik Singh @ Gora.

5. Per contra, learned State counsel, assisted by learned counsel for respondent No.2, supports the impugned order passed by learned trial Court, by contending that the same has been passed after appreciation of the evidence brought on record.

6. Having heard learned counsel for the parties and after perusing the record with their able assistance, it transpires that the petitioner is a student at the British Global Institute, Kahnuwan Road, Gurdaspur where she is taking an IELTS course. The CCTV footage, as verified by the investigating agency, confirms that the location of the petitioner at the time of the alleged incident does not tally with the narrative put forward by the victim. A perusal of the FIR(supra) reflects that the victim met the petitioner

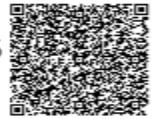


at about 3 PM, however the CCTV footage verifies that the petitioner was at the institute from 10:06 AM to 4:36 PM. The teacher namely Baljit Singh has also confirmed the attendance of the petitioner. As such, the investigating agency had correctly exonerated the petitioner and the learned trial Court has fallen into grave error by summoning her as an additional accused by allowing the application filed under Section 319 Cr.P.C.

7. Discussing the scope of Section 319 Cr.P.C., a Constitution Bench of Hon'ble Supreme Court in case titled ***Hardeep Singh Vs. State of Punjab, 2014(1) RCR (Criminal) 623***, speaking through Justice B.S. Chauhan, has observed as follows:

"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."

8. This ratio of law was reiterated by a two Judge bench of the Hon'ble Supreme Court in the case of ***Sagar Vs. State of Uttar Pradesh and another, 2022(2) R.C.R.(Criminal) 344.***

9. Recently, a two Judge bench of the Hon'ble Supreme Court in ***Juhru and others Vs. Karim and another, 2023 AIR (Supreme Court) 1160*** examined the scope of section 319 Cr.P.C and speaking through Justice Surya Kant, observed as follows:

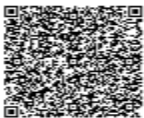
"17. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a prima-facie case is sine quo non to summon an additional accused. We may hasten to add that with a view to prevent 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.”

10. In view of the above discussion, the present petition is allowed and the impugned order dated 13.09.2023 (Annexure P-6) passed by learned Additional Sessions Judge, Gurdaspur, is set aside.

11. Mere statement of the complainant, which is not substantiated by any credible material, cannot be a ground to invoke the discretionary and extraordinary power of this Court to summon an additional accused under Section 319 Cr.P.C. In the absence of any material suggesting existence of more than *prima facie* case available during the course of trial of an offence, the Courts ought to refrain themselves from exercising its discretionary and extraordinary power under Section 319 Cr.P.C. The Constitution Bench of the Hon'ble Supreme Court in **Hardeep Singh's** case (*supra*) has held that the power under Section 319 Cr.P.C is a discretionary and extraordinary power. It is to be exercised only on the basis of the material available before the Court during the trial and not because the Magistrate or the Sessions Judge is



of the opinion that some other accused/person may also be guilty of committing that offence.

12. All the pending miscellaneous application(s), if any, shall also stand disposed of.

[HARPREET SINGH BRAR]
JUDGE

19.07.2024
vishnu

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