



222 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRR-2423-2023

Date of Decision: 09.12.2024

NARINDER KUMAR @ BITTU

...Petitioner

V/S

STATE OF PUNJAB & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Prateek Pandit, Advocate
for the petitioner.

Mr. Nitesh Sharma, DAG, Punjab.

Ms. Deepika, Advocate for
Mr. Sandeep Yadav, Advocate
for respondent no.2.

HARPREET SINGH BRAR J. (ORAL)

1. The instant revision petition has been preferred against the impugned order dated 26.07.2023 passed by learned Judge, Special Court, Kapurthala vide which the petitioner has been summoned as additional accused by allowing the application filed by the prosecution under Section 319 of Cr.P.C. in the case stems from FIR No. 57 dated 27.03.2019 registered under Sections 363, 366-A, 376-D, 368 of IPC and Sections 5, 6 of POCSO Act, 2012 at Police Station- City, Kapurthala.

2. Succinctly, facts of the case are that FIR (*supra*) came to be registered on the statement made by respondent no.2, who is the father of the victim, before the concerned police. It was alleged therein that his daughter, aged about 14 years, went missing on 26.03.2019 when the entire family was sleeping. It was also alleged that he had full belief that their neighbour Sanjeev



Kumar @ Sanju had enticed away his daughter on pretext of marriage. During the course of investigation, accused Sanjeev Kumar was arrested on 27.03.2019 and the victim was recovered by the police and produced before the learned Judicial Magistrate, where, she recorded her statement under Section 164 Cr.P.C. Thereafter, offences under Sections 376-D, 368 of IPC and Sections 5, 6 of POCSO Act were added to the case vide DDR No.42 dated 03.04.2019. The victim then suffered a supplementary statement under Section 161 Cr.P.C. on the basis of which Sanjeev Kumar @ Sanju and Neeraj Kumar were nominated as accused.

3. Upon completion of investigation by the concerned police, final report under Section 173 Cr.P.C. was presented only against accused Sanjeev Kumar, whereas, the co-accused persons were found innocent and kept in column No.2. Subsequently, the trial Court framed charges against Sanjeev Kumar @ Sanju only for commission of offences punishable under Sections 363, 366, 376-D, 368 of IPC and Section 4 of Protection of Children from Sexual Offences Act, 2012. Thereafter, in her examination-in-chief as PW-3, the child victim levelled allegations against the present petitioner as well. Consequently, the prosecution moved an application under Section 319 Cr.P.C. for summoning the present petitioner as an additional accused in the present case on the grounds that specific allegations were levelled against him by the victim in her examination-in-chief as well as her statement made under Section 164 Cr.P.C. The aforesaid application was allowed by the learned trial Court which has led the petitioner to approach this Court by way of the present revision petition.

4. Learned counsel appearing for the petitioner inter alia contends



that trial Court has erred in summoning him as an additional accused as he had no role to play in the alleged offences and has not even been named in the FIR. His name came up for the first time in the statement of the victim recorded before the Special Court on 13.03.2023. Even in her previous statement recorded before the Court on 24.02.2020, the complainant has neither named the present petitioner nor attributed any role to him. Even the father of the complainant has not stated anything about the petitioner. The petitioner has been implicated as an afterthought due to the fact that he was the husband of the landlady where the family of the victim had been residing as tenants.

5. Learned state counsel submits that the child victim has categorically deposed in her examination-in-chief regarding involvement and complicity of the petitioner in committing a heinous act with her along with other co-accused. Further, in her statement recorded under Section 164 Cr.P.C., the child victim has specifically stated that she was kidnapped and then raped by the accused persons including the present petitioner. He submits that no interference is as such warranted by this Court.

6. I have heard the learned counsel for the parties and perused the material available on record. It transpires that in her first statement made on oath before learned Chief Judicial Magistrate, Kapurthala on 01.04.2019, the victim did not name the present petitioner or attribute any role to him. Rather, it is the co-accused Sanju, Neeraj and his two uncles (*mamas*) who have been named. Furthermore, in the supplementary statement of the victim which was recorded on 03.08.2019, name of the present petitioner again finds no mention. Similarly, in their respective statements made under Section 161 Cr.P.C. by the mother and father of the victim, there is not even a whisper qua



the name or role of the present petitioner. It is pertinent to note that the first time when the name of the petitioner has come forward is in the examination-of-chief of the victim on 13.03.2023. It is bemusing that for such a long period, the victim as well her family chose to keep mum about the involvement of the present petitioner who is in fact is the husband of the landlady where the victim and her family reside. Moreover, the petitioner has nowhere arrayed as an accused in the final police report submitted by the investigating agency on 26.09.2019. It is trite law that summoning of a person as an additional accused under Section 319 Cr.P.C. requires a much stronger evidence than mere probability of complicity of such person in committing the alleged offence. Undisputedly, it is an extraordinary power and should be used with parsimony.

7. 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."

8. 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."

9. 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."

10. Mere statement of the victim, which is unsubstantiated 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,



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the Courts should 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 and the same must be exercised judicially, having regard to the facts and circumstances of the case.

11. Taking into consideration the peculiar facts and circumstances of the case at hand, this Court is of the opinion that case of the prosecution does not satisfy the test of more than prima facie case qua the present petitioners as enunciated in Hardeep Singh's case (supra).

12. Accordingly, the instant revision petition is allowed and the impugned order dated 26.07.2023 passed by learned Judge, Special Court, Kapurthala, is hereby set aside along with subsequent proceedings, if any, qua the present petitioner.

09.12.2024
manisha

(HARPREET SINGH BRAR)
JUDGE

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