

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

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**Crl. Revision No.2666 of 2023
Date of decision: 22.04.2024**

A **... Petitioner**

Vs.

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

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

**Present:- Mr. Sanjeev Kumar, Advocate,
for the petitioner.**

MANISHA BATRA, J.

1. The instant petition has been filed by the petitioner challenging the order dated 28.08.2023 passed in Sessions Case No.SC/469 of 2021 titled as State v. Anil arising out of FIR No.212 dated 20.06.2021 registered under Sections 323, 328, 376 and 506 of IPC and Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (For short “Act, 1989”) at Police Station Israna, Panipat on the basis of written complaint filed by the present petitioner “A” on 20.06.2021 whereby, an application filed by her for summoning the respondent No.2 as an additional accused was dismissed.
2. Brief facts of the case relevant for the purpose of disposal of the present petition are that she had been introduced to accused Anil by her classmate Pankaj. The accused Anil had started making calls to her

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from the last one month and she had been avoiding him. In the last week of March 2018, he again called her and insisted to meet with him once to which she had agreed. He had taken her to some house on his motorcycle and had offered tea on consuming which she had started feeling dizziness and on gaining consciousness, she found that she had been ravished by the accused Anil. He also disclosed to her that he had taken her pictures and made objectionable videos and threatened to make them viral if she disclosed about the incident to anybody and also assured to solemnize marriage with her. Due to fear, she remained silent. She alleged that the accused Anil by taking advantage of this fact and by blackmailing her kept on ravishing her by taking her to different places.

3. As per the further allegations, in August 2018, he had called her at Gohana Road, Panipat wherein he was found sitting in a car with some friend who was unknown to her. He pressurized her to sit in the car and committed rape in the car itself by parking the same in a side. Thereafter, he insisted her to make relations with his friend and his friend too had a scuffle with her and it was only on extending threat by her to raise hue and cry that she was left. She further alleged that now he had been calling and sending messages to her and she was also receiving obscene calls from several persons, some of whom were friends of the accused Anil. Initially, a case under Sections 323, 328, 376 (2) (n), 376-D and 506 of IPC was registered. Offences under Sections 3 (1) (r) and (s) and 3 (2) (va) of Act, 1989 were added later on. After registration of FIR, investigation proceedings were initiated. The victim was medically

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examined. Her statement under Section 164 of Cr.P.C. was also recorded. The accused Anil was arrested on 25.06.2021. He suffered disclosure statement admitting his involvement in the subject crime. During investigation, it came to the knowledge of the investigating agency that the name of the friend of the accused Anil who had also tried to sexually assault the prosecutrix in August 2018 was Karambir son of Ram Kumar resident of Village Diwana, Panipat. However, after conducting investigation, he was found to be innocent and had not been arrested and challaned. After completion of necessary investigation and usual formalities, challan was presented against the accused Anil and presently, he is facing trial for commission of the aforementioned offences. The prosecutrix had been examined in chief as PW-3 before the learned trial Court and reiterated the allegation that in the second week of August 2018, she had been called by the accused Anil, was made to sit in a car and was ravished by him in the rear seat of the said car. She further deposed that the accused Anil also forced her to have sexual relations with his friend who was also in the same car and then the said friend also tried to sexually assault her. During the course of recording of statement of the prosecutrix by way of examination-in-chief itself, an application under Section 319 of Cr.P.C. was filed by the complainant forwarded by the prosecution which was dismissed vide order dated 28.08.2023. The instant petition has been filed aggrieved by the abovesaid order.

4. It is argued by learned counsel for the petitioner that the impugned order is liable to be set aside as the same is a non-speaking

order. While passing the same, the learned trial Court did not apply its judicious mind. There was overwhelming evidence in the form of testimony of prosecutrix corroborating her earlier version that the friend of the accused Anil had also tried to sexually assault her by asking for sexual favour. The investigating agency intentionally did not get conducted test identification parade of the proposed accused and had wrongly given clean chit to him. With these broad submissions, it is argued that the impugned order is liable to be reversed, the petition deserves to be allowed and the respondent No.2 is liable to be summoned and tried as additional accused along with the co-accused already arraigned.

5. I have given due deliberations to the contentions as raised by learned counsel for the petitioner and have carefully 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 Superme 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 that the power under Section 319 Cr.P.C. is discretionary and an extraordinary power. It has to be exercised sparingly and only in

those cases where the circumstances of the case so warrants. 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 material placed before the Court that such power should be exercised and not in a casual and cavalier manner. It was also observed 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 strong evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as has been established 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 of Cr.P.C.

7. Reference can also have made to a recent pronouncement of Hon'ble Supreme Court cited as **Sagar Vs. State of UP and another**, (2022) 6 SCC 389 wherein the Apex Court observed as under:-

“ 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 notice 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. It is also well settled proposition of law that an order under Section 319 of the Cr.P.C. should not be passed only because the first informant or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be assigned by the Court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. The evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction and for this purpose, the Courts are required to apply stringent tests, one of such tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

9. On applying the proposition of law as laid down in the above cited authorities to the peculiar facts and circumstances of the present case, I am of the considered opinion that the petition does not deserve to be allowed. In her complaint which has been produced on record by the petitioner/prosecutrix as Ex.P-1 she had levelled allegations of being repeatedly ravished by the accused Anil already arraigned and facing trial. Undoubtedly, in her complaint, she had mentioned that in August 2018, she had been called by the accused Anil to Gohana Road wherein he was found sitting inside a car and ravished her in the car itself and had also forced her to have physical relations with a friend of him who too was sitting in the car and that the said friend had a scuffle with her. However, she had not identified the said friend nor mentioned his name.

Even in her statement recorded under Section 164 of Cr.P.C., she did not say that it was the respondent No.2 who had a scuffle with her and had tried to assault her nor his name was mentioned by her.

10. Further, a copy of deposition of the prosecutrix has been placed on record as Annexure P-4 and a perusal of the same reveals that even while appearing as such, she did not say that it was the proposed accused Karambir who was sitting in the car and it was he who had tried to ravish her. There is also not shown to be even a whisper of word by her that she had identified the proposed accused by his name during any stage of the investigation. Her statement also does not show that she came to know about the identity of the proposed accused from some other source. As such, obviously there was absence of any satisfaction in the evidence led by the petitioner before the trial Court on the basis of which any finding could be given that there was even any prima facie evidence that was stronger than mere probability of the complicity of the proposed accused in the commission of the crime which is alleged to have been committed by the so called friend of the main accused. Therefore, obviously there was no scope for the trial Court under Section 319 of Cr.P.C. to form any opinion as to the guilt of the proposed accused and in the absence of such satisfaction, the learned trial Court rightly refrained itself from exercising powers under Section 319 of Cr.P.C. as the satisfaction desirable for summoning the proposed accused

under Section 319 of Cr.P.C. was not found on the record.

11. In view of the discussion as made above, no irregularity or illegality can be stated to have been committed by learned trial Court while passing the impugned order and dismissing the application of the petitioner, which was passed after analyzing the facts of the case in a proper perspective. This Court, therefore, has no reason to interfere with the findings as given by learned trial Court. Accordingly, the petition is dismissed.

22.04.2024
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No