

No. 288 dated 19.06.2016 registered under Sections 506, 120-B of IPC and Sections 10, 12 of POCSO Act at Police Station- Pehowa, Kurukshetra.

CRM-M-5165-2019

The aforementioned petition has been preferred under Section 482 Cr.P.C. for setting aside of the impugned order dated 05.07.2018 (Annexure P-6) passed by learned Additional Sessions Judge (Exclusive Court for Heinous Crimes Against Women), Kurukshetra vide which petitioner no.1-Nishan Kaur @ Shani and petitioner no.2-Jagbir Singh have been summoned to face trial as additional accused under Section 319 of Cr.P.C. in the case arising out of FIR No. 288 dated 19.06.2016 registered under Sections 506, 120-B of IPC and Sections 10, 12 of POCSO Act at Police Station- Pehowa, Kurukshetra.

FACTUAL MATRIX

1. For the sake of brevity, facts are being extracted from CRR-3060-2018 as both of the above-mentioned petitions pertain to similar facts and circumstances and are challenging the same order dated 05.07.2018.
2. Brief facts of the case are that the FIR (supra) was registered upon a written complaint made by Sukhwinder Singh, wherein, it was alleged that Nishan Kaur @ Shani, Jagbir Singh and Kashmir Singh @ Bittu along with two other co-accused, undressed his minor daughter aged 11 years when she was alone at home on 15.06.2016. The said accused also touched her private parts and clicked her naked photographs and also recorded her obscene video. When the complainant came home, the accused, upon hearing the sound of his motorcycle, started to flee while threatening him and his family with death.
3. In consequence of the FIR (supra), the concerned police arrested co-accused Pardeep Singh @ Happy and Surjit Singh on 20.07.2016 and after

completion of investigation, final report under Section 173 Cr.P.C. was presented against them. Qua the present petitioners, the pending investigation was completed and a supplementary challan was filed against Nishan Kaur @ Shani, Jagbir Singh and Kashmir Singh @ Bittu, wherein, it was recorded by the investigation agency that the aforesaid petitioners were found to be innocent and thereby, not charge-sheeted.

4. Charges against co-accused Surjit Singh were framed by the learned trial Court vide order dated 05.10.2016. Thereafter, statements of complainant PW1 and the victim PW2 were recorded. Then, an application under Section 319 Cr.P.C. was moved by the complainant for summoning Nishan Kaur @ Shani, Jagbir Singh and Kashmir Singh @ Bittu as additional accused. The learned trial Court allowed the said application and vide the impugned order dated 05.07.2018, summoned petitioner- Nishan Kaur @ Shani for commission of offences under Sections 506/120B of IPC and Section 10, 12 of POCSO Act whereas, petitioners- Jagbir Singh and Kashmir Singh @ Bittu were summoned as additional accused for commission of offence punishable under Sections 506/120-B of IPC.

5. Aggrieved by the abovesaid order dated 05.07.2018, the petitioners namely Nishan Kaur @ Shani and Jagbir Singh have approached this Court by way of the petition under Section 482 Cr.P.C. bearing number CRM-M-5165-2019, whereas, Kashmir Singh @ Bittu has approached this Court by way of the revision petition bearing number CRR-3060-2018.

CONTENTIONS

6. Learned counsel appearing for the petitioner- Kashmir Singh @ Bittu in CRR-3060-2018 inter *alia* contends that no overt act has been

attributed to as clear from a bare perusal of the FIR (supra) as well as the statement of prosecutrix recorded under Section 164 Cr.P.C. He further submits that the allegations levelled against the petitioner lack specificity as no time, date and place when the alleged threats were made, is mentioned in the FIR (supra) or statement of the complainant PW1. He further submits that no new evidence came up before the learned trial Court on account of which the petitioner could be summoned as an additional accused since summoning of an additional accused is a serious matter and requires more than prima facie evidence. He has placed reliance upon the judgements rendered in the cases of ***Sarabjit Singh vs. State of Punjab, 2009(3) R.C.R.(Crl.) 388; Lal Suraj @ Suraj Singh vs. State of Jharkhand, 2009(1) R.C.R.(Crl.) 504*** and ***Dharam Vir vs. State of Haryana, 2023(2) R.C.R.(Crl.) 677.***

7. Learned counsel for the petitioners- Nishan Kaur @ Shani and Jagbir Singh in CRM-M-5165-2019, *inter alia*, contends that mobile phone recovered from the accused by the police was found to not contain photos of victim as alleged by the complainant. He vociferously contends that the petitioners were found innocent after considering the same set of evidence after completion of investigation conducted by the concerned police in which statements of the co-villagers were also recorded to the effect that the FIR (supra) is a result of a personal grudge between the complainant and the accused. It is further contended that Nishan Kaur @ Shani is the mother of juvenile in conflict with law-Pardip @ Happy who was acquitted by the Juvenile Court, Kurukshetra. He further submits that the impugned order has been passed in a most perfunctory manner and is liable to be set aside. To support his contentions, the learned counsel has placed reliance upon the

judgement rendered in the case of ***Brijendra Singh vs. State of Rajasthan, 2017(3) R.C.R.(Crl.) 374.***

8. *Per contra*, learned counsel for respondent no.2-complainant (CRR-3060-2018), *inter alia*, contends that the complainant as well as the victim have maintained a consistent stand throughout qua the specific averments made against the accused. He further submits that the judgement rendered in the case of juvenile Pardip @ Happy is not binding upon the Court concerned in a criminal trial. He further contends that the abovesaid petitioners have been correctly summoned as additional accused by the learned trial Court upon proper appreciation of the evidence on record which is sufficient to establish more than prima facie case against them.

9. Learned state counsel submits that all three petitioners, respectively, are specifically named in the FIR (supra) and their names and actions are duly given in the evidence on record which duly establishes their guilt. It is further submitted that the impugned order has been passed in accordance with law and due appreciation of the entire evidence on record and thus, no interference is warranted by this Court.

OBSERVATIONS & ANALYSIS

10. I have heard the learned counsel for the parties and perused the material available on record. It transpires that the alleged incident occurred on 15.06.2016 but the FIR (supra) was lodged on 19.06.2016. Further perusal of the case file shows that the overt illegal act has been attributed to Nishan Kaur @ Shani, Surjit and Pardip @ Happy, where accused-Pardip was acquitted by the Juvenile Court, Kurukshetra. Initially, after the necessary investigation, the concerned police presented the final report under Section 173 Cr.P.C. only

against Surjit Singh, whereas, the petitioners were duly exonerated. Furthermore, the main allegation levelled by the complainant against the petitioners is that they were involved in preparing false marriage certificates, being the members of a Gurudwara Committee. However, the statement of the complainant PW1 shows inconsistency as material improvements have been made, especially, against Jagir Singh and Kashmir Singh. Therefore, this Court is inclined to observe that there is lack of cogent evidence which can establish more than prima facie case against the petitioners.

11. It is pertinent to discuss the perspicuous observations made by the Hon'ble Supreme Court in some of its recent judgements. 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 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."

12. 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 unrebutted, would lead to conviction."

13. 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.”

CONCLUSION

14. In view of the discussion made hereinabove, the present revision petition as well as the instant petition preferred under Section 482 Cr.P.C. are disposed of in the following terms: -

- i. The impugned order dated 05.07.2018 passed by learned Additional Sessions Judge (Exclusive Court for Heinous Crimes Against Women), Kurukshetra, is hereby, set aside.
- ii. Nothing observed herein shall be construed as a comment on the merits of the case at hand, thereby, causing prejudice to the case of the prosecution.

15. Pending CRM(s), if any, are also disposed of accordingly.

(HARPREET SINGH BRAR)
JUDGE

20.04.2024
Neha

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