



CRR-186-2022 (O&M)

-1-

279

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-186-2022 (O&M)

Date of Decision:- 09.01.2025

Raj Bala

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Mohan Singh Chauhan, Advocate
for the petitioner.

Ms. Aditi Girdhar, AAG, Haryana.

Mr. Gaurav Sethi, Advocate for respondent No. 2.

AMARJOT BHATTI, J.(Oral)

Petitioner Raj Bala has filed revision against impugned order dated 30.11.2021 passed by learned Additional Sessions Judge, Fast Track Court under POCSO Act, Ambala, whereby application filed under Section 319 Cr.P.C. for summoning of accused Seema/respondent No. 2 in FIR No. 0098 dated 22.09.2020 under Section 4 of POCSO Act, Section 376(3), 506 of IPC and Section 67(A) of Information Technology (Amendment) Act, 2008 registered at Police Station Women, Ambala, has been dismissed wrongly and without application of judicial mind.

2. Brief facts of the case are Raj Bala filed written complaint against Seema wife of Gopal and Gopal son of Ram Kishan with allegations of commission of rape with her minor daughter after giving her some intoxicant substance and preparing her video and circulating it on internet. It is alleged that her minor daughter i.e. victim was born on 13.07.2006. Seema was residing in their neighbourhood, whom victim



addressed her as '*Bua*'. On the day of occurrence i.e. 07.06.2020, victim accompanied Seema to collect rent. Complainant had gone to meet her elder daughter at Narwana. Therefore, when victim returned alongwith accused Seema, she told her daughter to take food alongwith her. Seema mixed some intoxicant in food and after consuming the same, victim became unconscious. Thereafter, Gopal – husband of Seema committed rape upon her daughter and Seema recorded her video. Victim regained senses and she was in pain. Seema told her to remain silent, otherwise, they will circulate video and also threatened to kill her mother and brother. Later on, complainant came to know about video of her daughter being circulated with persons living in locality. She talked to victim who disclosed about said occurrence. With these allegations, present FIR was registered.

3. Investigation was completed and challan was presented against Gopal, whereas, accused/respondent No. 2 Seema was kept in column No.2 of challan report under Section 173 Cr.P.C. Charges were framed and statement of victim was recorded and thereafter, application was filed under Section 319 Cr.P.C. to summon accused Seema who was kept in column No. 2 of challan report.

4. Application filed by petitioner was declined by passing impugned order dated 30.11.2021 by learned Additional Sessions Judge, Fast Track Court under POCSO Act, Ambala. Feeling aggrieved of this order, present revision was filed.

5. Learned counsel representing petitioner argued that application under Section 319 Cr.P.C. was declined by learned trial Court without



proper appreciation of facts of case and statement of victim recorded as PW-2 (Annexure P-7). Respondent No. 2/accused Seema is specifically named right from beginning and specific role is attributed to her. Statement of victim recorded during investigation (Annexure P-2/T), statement of victim recorded under Section 164 Cr.P.C. (Annexure P-3/T) are totally ignored without any valid justification. There is nothing in challan report (Annexure P-4/T) as to why version of victim was found to be false and there is no basis to consider accused/respondent No. 2 Seema as innocent. Prior to this, petitioner had filed application under Section 190(i)(b) Cr.P.C. for taking cognizance and summoning Seema as one of accused and said application was also declined vide order dated 07.09.2021 (Annexure P-5). Petitioner Raj Bala had also filed CRM-M No. 36460 of 2020, seeking direction that Investigating Agency was not investigating case in a fair and proper manner. Said criminal petition was disposed of vide order dated 20.09.2021 (Annexure P-6). After recording of statement of victim as PW-2 (Annexure P-7), again application was filed under Section 319 Cr.P.C. which has been declined on flimsy grounds that during investigation, accused/respondent No. 2 Seema was found to be innocent. It was further observed that she was not having good terms with her husband and was residing separately from him and thirdly it was observed that offence under Section 328 IPC was not made out and on these basis, application was declined. It is argued that accused/respondent No. 2 Seema is specifically named from the very beginning and specific role is attributed to her in the commission of offence, therefore, she was required to be summoned to face trial alongwith accused Gopal, who is her husband.



6. Respondent No. 2 filed reply to present petition. Learned counsel representing State assisted by learned counsel for respondent No. 2 consistently argued that during investigation, respondent No. 2 Seema was found to be innocent. She was having dispute with her husband, as a result, she was living separately. In support of this, acknowledgment/consent for update of Aadhaar Card (Annexure R-1) and one electricity bill in the name of Seema are placed on record. Apart from this, there is statement of MC Latika Prashad recorded by Women Cell, Ambala dated 24.09.2022, which is also placed on record as Annexure R-2. There was no evidence to show that respondent No. 2 Seema gave some intoxicant to victim, as a result, she became unconscious. Application filed by petitioner under Section 190 Cr.P.C. was also rejected by learned trial Court vide order dated 07.09.2021 (Annexure P-5). It was for complainant to establish her case more than prima facie case to summon Seema as accused to face trial. Considering aforesaid factual position, trial Court has rightly considered facts and circumstances of case while dismissing application under Section 319 Cr.P.C.

7. I have considered the arguments advanced by learned counsel for petitioner as well as learned State counsel and learned counsel representing respondent No. 2 and have also carefully perused documents annexed with present case. Learned trial Court has declined application under Section 319 Cr.P.C. Provisions of Section 319 Cr.P.C. runs as under:-



“319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

Before dealing with facts of present case, gainful reference can be made to the judgment of Hon’ble Supreme Court of India cited in **2021(4) R.C.R.(Criminal) 219**, case titled “**Ramesh Chandra Srivastava Versus State of U.P. & Anr.**”, where in said judgment, points have been raised which must be considered while invoking power under Section 319 Cr.P.C. Para No. 8 of said judgment runs as under :-

“8. We say this for the following reason:

The test as laid down by the Constitution Bench of this Court for invoking power under Section 319 Cr.P.C. inter alia includes the principle that only when strong and cogent evidence occurs against



a person from the evidence the power under Section 319 Cr.P.C. should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by this Court, is one which is more than prima facie case which is applied at the time of framing of charges.”

As referred above, FIR No. 98 dated 22.09.2020 under Section 4 of POCSO Act, Section 376(3), 506 of IPC and Section 67(A) of Information Technology (Amendment) Act, 2008 registered at Police Station Women, Ambala (Annexure P-1/T) has been registered on written complaint of present petitioner Raj Bala who is mother of the victim. During course of investigation done by police, statement of victim was recorded on same day (Annexure P-2). Said victim was student of 9th class, age about 14 years. It was mentioned that accused Seema/respondent No. 2 was residing in their neighbourhood. Thereafter, statement of victim was recorded before the Magistrate under Section 164 Cr.P.C. (Annexure P-3/T). Perusal of these two statements clearly indicate that accused/respondent No. 2 Seema was specifically named that it was she who took victim alongwith her and provided food during lunch time. After consuming food, victim became unconscious. Allegedly her husband Gopal committed rape upon her and video of same was prepared by accused/respondent No. 2 Seema. During investigation, accused/respondent No. 2 Seema was found to be innocent and she was kept in column No. 2. Only accused Gopal faced trial. After framing of charge-sheet, statement of victim was again recorded as PW-2 (Annexure P-7) and version of victim remained consistent as she had narrated the facts before police as well as before the Magistrate when her statement was recorded under Section 164



Cr.P.C. It cannot be ignored that alleged occurrence took place on 07.06.2020 and when petitioner, who is mother of victim came to know about video being circulated regarding said act, she inquired from her daughter who confirmed the occurrence and matter was reported to police. Therefore, there is gap of more than 3 months in registration of FIR. It is not disputed even by prosecution that regarding said sexual act, video was prepared which was circulated and mother of victim came to know about same, which resulted into this FIR. As per the version of victim, said video was prepared by accused/respondent No. 2 Seema. There is no valid reason with prosecution why the consistent statement of victim was ignored qua role of accused/respondent No. 2 Seema. Stand taken by accused/respondent No. 2 Seema that she was living separate or she was having dispute with her husband, is her defence which can be established and considered during the course of trial regarding the alleged occurrence dated 07.06.2020. The veracity of documents relied upon by accused/respondent No. 2 Seema in the shape of aforesaid acknowledgment/consent for update of Aadhaar Card (Annexure R-1), electricity bill in the name of Seema dated 12.04.2022 and statement of MC Latika Prashad (Annexure R-2) can be considered during trial. There was no valid reason to ignore version of petitioner or minor victim. Considering the version of victim right from the beginning attributing specific role to Seema respondent No. 2, there is more than sufficient material against her.

In view of above, impugned order dated 30.11.2021 passed by learned Additional Sessions Judge, Fast Track Court under POCSO Act, Ambala is not on sound footing and same is accordingly set aside by

accepting present criminal revision. Learned trial Court is directed to consider present case in the light of provisions under Section 319 Cr.P.C. and principles laid down in various judgments of Apex Court.

- 8. Criminal revision is accordingly, disposed of.
- 9. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

09.01.2025 (AMARJOT BHATTI)
JUDGE

lalit

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