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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 27th January, 2025*

+ **CRL.M.C. 4071/2017 & CRL.M.A. 16340/2017**

TANISHA RANI SHARMA

.....Petitioner

Through: Mr. Anurag Jain & Mr. Ujwal Ghai,
Advocates

Versus

STATE NCT OF DELHI

.....Respondent

Through: Mr. Shoaib Haider, Additional Public
Prosecutor for Respondent-State with
S.I. Meeta, PS Mukherjee Nagar,
Delhi

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

% **J U D G M E N T** (oral)

1. The present Petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' *hereinafter*) has been filed on behalf of the Petitioner to set aside the *Order dated 11.05.2017, vide which the Application under Section 319 of Cr.P.C.* filed on behalf of the Respondent to summon the Petitioner in FIR No. 69/2016, registered at Police Station Mukherjee Nagar, Delhi for the offences under Sections 376/506 of the *Indian Penal Code, 1860 ('IPC' hereinafter)* has been allowed by the learned Additional Sessions Judge.

2. *Learned counsel for the Petitioner* submits that there is not a single



averment made against the Petitioner in the FIR and in the Charge-sheet, except in the Statement of the Prosecutrix recorded under Section 164 Cr.P.C. that the main accused Krishan Kumar Sharmahad threatened her by saying that his wife is the daughter of a Minister and she is always protected by ten gunners, and also made her talk to his wife on a phone call, who told the Complainant to keep quiet and stay with him or else she would be killed.

3. It is further submitted that the Petitioner was neither named in the Charge-sheet as an accused nor was there any cogent allegation made against her in the entire Charge-sheet, which has already been filed in the Court. However, subsequently, on the Application under Section 319 Cr.P.C. filed on behalf of the Respondent-State, the Petitioner has been summoned.

4. It is, therefore, submitted that in view of the fact that there are no allegations whatsoever disclosed in the entire Charge-sheet against the Petitioner, she is liable to be discharged.

5. ***Learned Additional Public Prosecutor*** on behalf of the Respondent submits that there is specific allegation made by the Complainant against the Petitioner in her Statement under Section 164 Cr.P.C. Therefore, the Petitioner has been rightly summoned under Section 319 Cr.P.C.

6. **Submissions heard and record perused.**

7. The fundamental question for consideration is the scope of Section 319 Cr.P.C. to summon an accused who has not been arrayed as an accused in the Charge-sheet. To appreciate this aspect, relevant part of Section 319 (1) is reproduced as under:-

“Section 319(1) in The Code of Criminal Procedure, 1973



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.”

8. The Constitution Bench of Apex Court in Hardeep Singh vs State of Punjab & Ors. (2014) 3 SCC 92 observed that the Court is sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.

9. It was further clarified that power under Section 319 Cr.P.C. can only be exercised on “*evidence recorded in the Court and not on material gathered at the investigation stage, which has already been tested at the stage under Section 190 Cr.P.C. and the process is issued under Section 204 Cr.P.C.*”

10. This principle has been explained in Brijendra Singh vs State of Rajasthan (2017) 7 SCC 706 wherein it was observed that at the time of taking cognizance, the Court has to see whether a prima facie case is made out to proceed against the accused. *Under Section 319 Cr.P.C. though the*



test of prima facie case is the same, the degree of satisfaction that is required is much stricter.

11. The two Judge Bench of Apex Court in Vikas vs State of Rajasthan, (2014) 3 SCC 321 considered the words “*in the course of any enquiry into or trial of an offence it appears from the evidence to observe that the Court may summon or arrest as the circumstances of the case may be, if it appears from the evidence that such person, not being an accused, has committed an offence for which such person could be tried together with the already arraigned accused persons.*

12. The Apex Court in the case of Ramesh Chandra Srivastava vs State of Uttar Pradesh and Others (2021) 12 SCC 608, has observed that the power under Section 319 Cr.P.C. can be invoked only when there is a strong and cogent evidence about the involvement of a person in the commission of the offence and must not be exercised in a casual or cavalier manner.

13. Recently, in the case of Omi @Omkar Rathore &Anr. vs The State of Madhya Pradesh &Anr. 2025 SCC OnLine SC 27, this aspect was again considered and after referring to the judgment of the Constitution Bench in Hardeep Singh (Supra) and while reaffirming the principle stated therein, reference was made to decision in the case of S. Mohammed Ispahani vs Yogendra Chandak (2017) 16 SCC 226 wherein it was observed “*that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the charge-sheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the charge-*



sheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition. However, once that stage has gone, the Court is still not powerless by virtue of Section 319 Cr.P.C. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused.”

14. In Omi @Omkar Rathore (supra), undoubtedly the Trial Court has the jurisdiction to add any person not being the accused before it, to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceedings on the evidence adduced that the persons who have not been arrayed as accused should face the trial. The Trial Court, however, can add such accused only on the basis of evidence adduced before it and not on the basis of the material available in the Charge-Sheet or the Case Diary, because such material contained in Charge-Sheet or Diary would not constitute evidence.

15. From the aforesaid case law, it emerges that the power under Section 319 Cr.P.C. is discretionary and exemplary power, which has to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It cannot be exercised by the Magistrate only because he is of opinion that some other person may also be guilty of committing that offence. Only when strong and cogent evidence occurs from the evidence led before the Court that such power should be exercised but not in a cavalier manner.

16. In the light of aforesaid observations, the facts of the present case may be considered.



17. The Charge-Sheet in the present case, was filed under Sections 376/506 IPC against Krishna Kumar Sharma, husband of the present Petitioner. She was not named or arrayed as an accused. After the cognizance of the Charge Sheet was taken by the Ld Magistrate and accused Krishna Kumar Sharma was summoned. However, subsequently, at the time of framing of Charge, the learned Additional Public Prosecutor for Respondent-State moved Application under Section 319 Cr.P.C. seeking summoning of the Petitioner.

18. From the record, it emerges that Tanisha Rani Sharma, the Petitioner, was not named as an accused in the Charge-Sheet. Her name was also did not feature in the FIR except that in the Complaint it was stated that the accused Krishna Kumar Sharma threatened the Complainant that his wife was daughter of a Minister and would get the Complainant- Prosecutrix and her family killed. However, the Complainant in her statement recorded under Section 164 Cr.P.C. improved her statement to state that Krishan Kumar Sharma made her talk to the Petitioner on telephone, who threatened her that she should abide by what Krishan Kumar Sharma told her or else they would kill her and her family members.

19. *Firstly*, there was no additional evidence was adduced to make out a strong *prima facie* case against the Petitioner justifying her summoning. In fact, no evidence whatsoever has been led before the learned Trial Court as the summoning of the Petitioner has been done at the stage of framing of Charge and no prosecution evidence has been led till then. Therefore, in light of the settled proposition of law as discussed above, there-being no evidence led before the learned Trial Court, the Petitioner could not have



been summoned.

20. It is significant to observe that in the Complaint also, no role was assigned to the Petitioner, except that accused Krishan Kumar Sharma had threatened the Complainant by taking name of the Petitioner. Subsequently, in her statement recorded under Section 164 Cr.P.C., the Complainant made an improvement by saying that she was made to talk to the Petitioner, who also extended threat. From the contents of the Charge-sheet, it can only be said that the allegations raised are vague and there was no strong *prima facie* case made out for summoning of the Petitioner at this stage. More so, at the time of summoning of the accused Krishan Kumar Sharma, the learned Trial Court despite having gone through the Charge-Sheet, did not find any evidence for summoning of the Petitioner.

21. Accordingly, the Order dated 11.05.2017 *vide* which the Petitioner has been summoned in FIR No. 69/2016, registered at Police Station Mukherjee Nagar, Delhi, is hereby set aside and the Petitioner is discharged. However, it is clarified that discharge of Petitioner at this stage would not be an impediment to her summoning in case evidence is led against her during the trial.

22. With aforesaid, the present Petition and pending Applications are accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

JANUARY 27, 2025

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