

(2006) 11 P&H CK 0110

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 1645 of 2006

Archna Kumari

APPELLANT

Vs

Meenakshi Kaushik
and others

RESPONDENT

Date of Decision: Nov. 13, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 319
- Penal Code, 1860 (IPC) - Section 366

Citation: (2007) 1 RCR(Criminal) 563

Hon'ble Judges: Tej Pratap Singh Mann, J

Bench: Single Bench

Advocate: K.S. Malik, for the Appellant; Rakesh Nehra, Advocate For the Respondent No. 3
Mr. Sidharath Sarup, A.A.G., for the Respondent

Final Decision: Dismissed

Judgement

T.P.S. Mann, J.

The petitioner has challenged the order passed by Additional Sessions Judge, Rohtak on 12.7.2006, vide which application filed by the prosecution for summoning respondent Nos. 1 and 2 u/s 319 Cr.P.C. as additional accused to face trial along with Mukesh Kaushik and two others, was dismissed.

2. The complaint was filed by the petitioner on 24.9.2005, wherein she stated that she was born on 1.1.1998. On the day of occurrence, she was, thus, less than 18 years of age. On 13.12.2004, she was allured by Mukesh Kaushik accused by promising her to arrange employment for her. He took her to his house where accused Meenakshi Kaushik and Nishi Kaushik were present. They filled sindoor in the maang of the complainant and threatened her that if she disclosed about the same to anyone, she would be done to death. On 23.12.2004, she was taken to Balaji (Mehandipur) by Mukesh Kaushik, where she was seen by one Krishan Bania on

31.12.2004. Accordingly, her father brought her back. Out of fear of the accused, the complainant and her parents left the area and started residing in another area. On 7.2.2005 her father went back to join his duty in B.S.F. On the following day, accused Mukesh Kaushik, while accompanied by his mother, two sisters and two other unknown persons came to her house and abducted her. She was kept at Kaushik Coaching Centre, where she was raped by accused Mukesh Kaushik. She became pregnant. However, the accused got her pregnancy terminated at Julka Nursing Home, Rohtak. At that time, Mukesh Kaushik along with his father and two sisters was present there. After the abortion, the accused kept the complainant for some days and, thereafter, she was turned out of the house.

3. The aforementioned complaint of the complainant was, thereafter, sent by the Judicial Magistrate to the police for registration of a case. Accordingly, FIR No. 555 dated 27.2.2005 was registered at Police Station City, Rohtak, under Sections 376/506/366 IPC. During the investigation of the case, the police found Meenakshi Kaushik and Nishi Kaushik to be innocent. These two were the unmarried sisters of Mukesh Kaushik. Only Mukesh Kaushik and his father and mother were challaned and thereafter charged for offences under Sections 120B, 366, 376, 315 and 506 read with Section 34 IPC.

4. When called upon to lead evidence, the prosecution examined as many as eight witnesses. Thereafter an application was filed u/s 319 Cr.P.C. for summoning Meenakshi Kaushik and Nishi Kaushik also as additional accused to face trial along with others.

5. The request of the prosecution for summoning aforementioned Meenakshi Kaushik and Nishi Kaushik was turned down by the trial Court on the ground that there was no clear evidence to connect them with the crime. The statement made by the petitioner that she was being left at the railway station on her Kinetic Honda by Meenakshi Kaushik, which was not stated by her in the complaint, was found to be an improvement.

6. I have heard the arguments of learned counsel for both the sides.

7. There is no sufficient evidence to show the complicity of respondent Nos. 1 and 2 in the crime. Only vague and general allegations were levelled. To begin with, it was alleged that they had forcibly filled Sindoor in the Maang of the complainant and threatened her that if she told about the same to anyone, she would be done to death. Further that the said two accused/respondents came to the house of the complainant along with others on 8.2.2005 and abducted her. The version of the complainant in the Court that she was left at the railway station by Meenakshi Kaushik accused on her Kinetic Honda was found to be an improvement upon her earlier version as contained in the complaint. Moreover, the trial of the case had progressed sufficiently, as eight witnesses had already been examined. The provisions of Section 319 Cr.P.C. are to be used sparingly when there are compelling

circumstances to show the involvement of accused, who had not been earlier challaned by the police.

8. In Michael Machado and another v. Central Bureau of Investigation, 2000 (2) RCR (Cri.) 75 (SC), Hon"ble the Apex Court held that mere suspicion of involvement of accused in the offence is not enough and the power u/s 319 Cr.P.C., though being discretionary in nature, should be exercised judicially, when the evidence indicates reasonable prospects of conviction. The Court held as under :-

The basic requirements of invoking the above section is that it should appear to the Court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the Court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the Court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well as tried along with the already arraigned accused.

But even then, what is conferred on the Court is only a discretion as could be discerned from the words "the Court may proceed against such person". The discretionary power so conferred should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the Court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the Court to proceed against other persons.

9. Similar view was expressed again by Hon"ble the Apex Court in Rakesh and another v. State of Haryana, 2001 (3) RCR (Cri.) 681 (SC). It was held that the power u/s 319 Cr.P.C. should be used sparingly.

10. In the case in hand, there are bleak chances of the conviction of accused/respondent Nos. 1 and 2. They are sought to be involved once again in the case on account of being the sisters of Mukesh Kaushik. Otherwise, there is no specific and clear evidence to show their involvement in the crime. The trial Court was, thus, justified in not accepting the requested of the prosecution to summon them u/s 319 Cr.P.C. as additional accused.

11. As an up shot of the above discussion, I find no merit in the present revision. The same is, accordingly, dismissed.