

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No.570 of 2016 (O&M)
Date of Decision: 12.07.2018

Mukul ...Petitioner

Versus

State of Punjab and another ...Respondents

with

CRR No.4642 of 2016 (O&M)

Gurpartap Singh @ Guri

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Argued by: Mr. Anurag Chopra, Advocate with
Ms. Kashika Kaur, Advocate
for the petitioner in CRR-570-1016.

Mr. Arun Sheoran, Advocate
for the petitioner in CRR-4642-1016.

Ms. Jaspreet Kaur, AAG, Punjab.
Mr. D.S. Dalee, Advocate
for respondent no.2.

ANITA CHAUDHRY, J.

Two revisions have been filed assailing the order passed by the Additional Sessions Judge, Patiala who allowed the application under Section 319 Cr.P.C. I propose to deal with both the petitions together as they arise out of the same order.

Manjinder Singh had got a case registered. The complainant's daughter (referred to as the victim) was 16 years old and was studying in Scholar Fields Public School, Patiala. She was staying as a paying guest in a residential house located in Sant Nagar, Patiala. On 25.12.2014 the victim called her mother Harinder Kaur and told her that a boy had been threatening her on phone and was demanding that she should maintain illicit relations with him, failing which he would post her nude photographs on the net. The victim also confided in her maternal uncle Gurvinder Singh. Gurvinder Singh made a call on the mobile number given by his niece. The person whose number was given was Lovish Thapar. Lovish Thapar was asked not to contact the victim. The victim was returning on her moped at 6:00 P.M. on the fateful day but she did not reach her house nor attended any calls. The family started a search and found the moped parked at the Bhakhra canal. The mobile was lying in the boot of the moped. The father suspected that fed up with the harassment at the hands of Lovish Thapar his daughter had jumped in the canal. In the initial investigation no-one could give any details. The phone recovered from the moped was unlocked. The incoming and outgoing call details were gone into. The messages were recovered. The girl was found to be in touch with Lovish for several months. The police registered a case under Section 354-A IPC and Section 11/12 of the POCSO Act. Later the victim's body was recovered from the Bhakhra canal on 10.01.2014. Her medical examination was got done. Spermatozoa was detected. The

cause of death was stated to be drowning. The police added Section 376 and Section 306 IPC.

On 18.01.2014 Manjinder Singh made a supplementary statement to the Investigating Officer and named several other persons including Misha Sagar. The complainant requested the Inspector General of Police to get a SIT constituted. SIT was constituted and the mobile phones of the victim, the main accused and other persons were gone into. Two of the phones could not be opened due to some technical defect. The SIT found that Mukul (petitioner) was constantly chatting with the victim from 21.12.2013 up to the date of incident. In that chat the police found that Lovish Thapar was demanding an I-Phone from the victim and on her failure he was threatening to upload her pictures on the net. The SIT in its report noted that Mukul was supporting the victim.

The SIT also found that the victim and Lovish Thapar were both residents of the same station and they were studying in the same school and were friendly. The complainant was not happy about it and admitted his daughter in another school at another station. The girl was lodged in a P.G. at Sant Nagar, Patiala. The victim used to go for her tuitions. Mukul (petitioner), one Sushank Mishra and some other students were also in the same group and became friends. The SIT also found that on 25.12.2013 Mukul, Sushank, Misha and the victim planned to celebrate Christmas at a restaurant in Model Town, Patiala. Mukul did not have any vehicle so he borrowed a vehicle from his

friend Gurpartap Singh @ Guri and picked up Misha and the victim near the railway gate. Sushank Mishra also joined them there. The victim disclosed to her friends that she had called Lovish on the pretext of giving the I-Phone. Lovish and his friend reached the restaurant later. Two of the friends got a call and went out for some time but came back. They found the victim paying the bill and Lovish and his friend were leaving the restaurant. The victim appeared to them to be under stress and when they asked her, she disclosed that Lovish had transferred the data on a hard disk and had not brought it and was threatening to upload the same on the net because she had not given him the I-phone. The friends advised her to confide in her mother on which the victim started crying. They consoled the victim and later Mukul and Gurpartap dropped Misha and the victim at the PG. Misha told this fact to her mother who in turn called the victim's mother. The SIT concluded and suggested that the friends should be cited as witnesses to make the case strong and exonerated the persons named by Manjinder Singh in the supplementary statement.

Kulwinder Singh in his statement under Section 161 Cr.P.C. on 03.01.2014 spoke about the call he had made on the phone number provided by his niece. He disclosed that he had asked Lovish not to make any calls to the victim. Manjinder Singh in his supplementary statement given on 18.01.2014 subsequently added that Mukul, Gurpartap, Sushank in connivance with Misha had committed gang rape upon the victim and she had taken the extreme step and had

ended her life. It was also disclosed that on 27.12.2013 Misha came to the Bhakhra Canal and she was accompanied by her colleagues and they searched the moped and they took away the key and they suspected that Misha and her colleagues had destroyed the suicide note which was lying in the moped.

The police after a thorough investigation filed the challan only against Lovish.

The trial commenced and statement of Manjinder Singh complainant was recorded. After the examination-in-chief an application was moved by the complainant for summoning the additional accused namely Mukul, Sushank, Gurpartap and Misha. That application was allowed and therefore, the challenge here.

The petitioners were asked to place on record the Whatsapp chat, which was done. The State filed its reply detailing all the facts and the outcome of the SIT and referred to the supplementary statement made by the complainant and his brother-in-law and gave the outcome of the application filed by the complainant.

No reply was filed by the complainant.

I have heard counsel of both the sides.

The main submission of the petitioners was that the petitioners were not named in the FIR and no role was attributed to them and the SIT had gone into the Whatsapp chat (available on file) and it can be seen that the friends were supporting the victim and there is nothing alarming in the chats and there was no material collected by the police or placed as evidence by the complainant and the trial Court

had erred in summoning them. It was urged that SIT had suggested that Mukul should be cited as a prosecution witness and on the contrary he has been summoned as an accused with absolutely no evidence much less *prima facie* raises a suspicion that they were involved. It was urged that the police had recorded the statement of various persons and the name of the petitioners was placed in column no. 2 and the trial Court could not have allowed the application as there was no material which could indicate their involvement. It was urged that the powers under Section 319 Cr.P.C. are extra ordinary and the trial Court should have convinced itself that there was strong and cogent evidence, indicating the petitioners' involvement. According to him, this condition was not satisfied and merely because the complainant had stated that he had named the petitioners was not enough.

The counsel for the complainant on the other hand urged that the trial Court had rightly exercised its powers on the basis of the deposition of the complainant. It was urged that the police was hand in glove with the accused who were local residents and only two of the accused have challenged the order and the statement of the complainant is evidence to the effect that the petitioners have committed the offence and there is no illegality or perversity in the order of the trial Court.

A query was posed to the complainant as to whether their application was forwarded by the Public Prosecutor. The answer was in the affirmative. The counsel for the complainant was asked to place on record the copy of the application. Later an in-complete copy was filed.

The State counsel submitted that their investigation had revealed that it was Lovish who was blackmailing the girl and was threatening to post her pictures and was demanding a I-Phone in return and this has come out in the Whatsapp chat between the victim and one of the petitioners here. It was stated that the Public Prosecutor as per their information had not forwarded the application filed by the complainant.

The principle for summoning additional accused have been settled by the Constitution Bench in ***Hardeep Singh Vs. State of Punjab and others (2014) 3 SCC 92***, but before that it is necessary first to reproduce the relevant portion of the statement made by the complainant:-

“My daughter used to go to school on a moped. On 27.12.2013, I made a telephonic call to my daughter but she did not respond. Then I talked with my relatives regarding non receiving of call by my daughter and I along with my wife, my father in law and brother in law Gurvinder Singh reached at the paying guest accommodation (PG) of my daughter. Then the owner of the PG told us that the roommate of my daughter namely Misha Sagar had informed her that they were to go for tuition in the morning (objected to being hearsay). But my daughter had not returned to the PG. We started searching for my daughter at many places, Gurudwara Sahib, her place of tuition. We found the moped of my daughter parked at the bank of the Bhakhra canal. The moped was locked. We went to

the Police Post Century Enclave and reported the matter to the police. My statement was recorded there on which I appended my signatures. I identify my signatures on the statement Ex.P1 which was not read over to me.

I had specifically stated to the police that Lovish Thapar, Misha Saggur, Mukul @ Mishu, Sushank Mishra, Gurpartap @ Guri were harassing my daughter and pressurizing her to develop illicit relations with them and if she did not do so, they would upload her nude photographs on the internet. Then police officials demanded the key of the moped from us but we disclosed to the IO that the additional key of the moped was lost and there was only one key with my daughter. Then we reached the PG of my daughter. Then we made an inquiry from the PG. Then Misha Saggur disclosed that the key of moped is with her. Then we reported the matter regarding the key of moped to the IO. Then IO called Misha Saggur at the police post where she handed over the key of the moped to the IO in our presence. Then I accompanied with the police officials reached the site where the moped was parked and opened the dickey with the help of key and found that the dickey of the moped had already been searched by someone. The moped was taken into police possession by the IO. A mobile set of my daughter was also recovered from the dickey of the moped and the same was also taken into police possession by the IO. I identify accused Lovish Thapar present in the Court today.”

The trial Court allowed the application and gave the following reasoning:-

“Perusal of the testimony of the complainant examined as PW-1 would show that he has named the proposed accused as perpetrators of the crime. He has categorically stated that the key of his deceased daughter's vehicle was recovered from the proposed accused Misha Saggar although scooty was parked near the Bhakhra canal. During the interrogation of the proposed accused by the SIT, it evolved that on the previous night of the occurrence, all the proposed accused had a long chat with the deceased over “Whatsapp”. The call details were analyzed by the cyber cell of Punjab Police which shows that prior to the occurrence the deceased was in conversation with all these accused. The investigating agency has also placed on record the photocopies of Whatsapp messages. Though the call details and the analyses thereof is yet to be proved on record yet an appraisal of the testimony of PW-1 would lead this Court to observe that a prima facie case does exist as against the proposed accused and their case also appears to be at par with the case of the accused who are already facing trial before this Court. These aforesaid observations find support from the law laid down by the Hon'ble Supreme Court of India in case titled as Hardeep Singh vs. State of Punjab (SC): Law Finder Doc ID # 514451 2014(3) SCC 92 wherein it is ruled that:.....”

The above would show that the trial Court referred to the material i.e. the Whatsapp chat but finally only considered the statement of PW-1 and observed that a prima facie case existed to summon the proposed accused as it appeared to it to be at par with the case of accused Lovish who was already facing trial. The trial Court referred to certain portion of the observations made in **Hardeep Singh's** case (supra) but failed to refer to the important observations contained in para 105 and 106 which dealt with the IVth question which was framed and answered by the Constitution Bench. The IVth question referred to the degree of satisfaction required for invoking the power under Section 319 Cr.P.C. and it would be relevant to quote para 105 and 106 and it reads thus:-

“105. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary 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 unrebutted, 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.

In **Hardeep Singh's** case, the Constitution Bench had settled the controversy on the issue as to whether the word evidence used in Section 319 Cr.P.C. has been used in a comprehensive sense and indicates the evidence collected during investigation or the evidence limited to the evidence recorded during trial. It held that it is that material, after cognizance is taken by the Court, that is available to it while making an inquiry into or trying an offence, which the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the Court. The word 'evidence' has to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. It means that the power to proceed against any person after summoning him can be exercised on the basis of any such material as brought forth before it. At the same time, the Apex Court cautioned that

the duty and obligation of the Court becomes more onerous to invoke such powers consciously on such material after evidence has been led during trial. The Court also clarified that 'evidence' under [Section 319 Cr.P.C.](#) could even be the examination-in-chief.

The Constitution Bench exhaustively dealt with the question and laid down the principles and when we translate the principles and apply them on the facts to this case, I am of the view that the trial Court acted in a casual and cavalier manner in passing the summoning order against the petitioners. The petitioners were not named in the FIR. An SIT was formed under the orders of the High Court which went into all the call details and Whatsapp chat of her friends. One of the petitioners (Mukul) was in constant touch with the victim on Whatsapp. The Whatsapp details are available on the record. They are also part of the challan as the SIT report was submitted in the Court. There is no threat or even a whisper of any relationship. The chat is only about the threat extended by Lovish, who was demanding a I-Phone and was threatening to upload the pictures on the internet. The chat reveals that Mukul was morally supporting the victim. The complainant named all the friends on the basis of suspicion. He had been unable to place any incriminating material on the record. He did not make any statement which unerringly points to the complicity of the petitioners in the crime. The counsel for the petitioners had drawn my attention to the detail report given by the SIT and with their assistance, the Whatsapp chat was gone into. I find that the trial Court had gone wrong to rely on the solitary oral statement of the

complainant, who had given absolutely no material to the Court to enable it to exercise the power under Section 319 Cr.P.C. What was required was strong evidence pointing to their complicity. The Court even failed to record its satisfaction. The statement of the complainant was enough. The trial Court was not justified in allowing the application. The power under Section 319 Cr.P.C. is an extra ordinary power, which has to be exercised sparingly and should be exercised only in those cases where the circumstances of the case so warrant. In the present case, there is no evidence much less *prima facie* to summon the petitioners. Therefore, both the petitions are allowed. The order is set aside so far as the petitioners are concerned.

The trial has been held up. The trial Court would conclude the trial within four months from the next date fixed in the case.

(ANITA CHAUDHRY)
JUDGE

12.07.2018

'Sunil'

Whether speaking/reasoned : Yes

Whether reportable : Yes