

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Criminal Miscellaneous Application No. 433 of 2013
(Under Section 482 CrPC)

Prakash Singh Applicant

Versus

State of Uttarakhand & Another Respondents

Mr. Lalit Sharma, Advocate, for the accused applicant.
Mr. J.S. Virk, AGA, for the State.

July 31, 2019

Hon'ble N.S. Dhanik, J.

This Criminal Miscellaneous Application, under Section 482 CrPC, is preferred to quash the summoning order dated 9.4.2013 passed by the Ist Additional Sessions Judge, Udham Singh Nagar in the Sessions Trial No. 136 of 2011, State v. Gaiden Lal, under Sections 363, 366, 376 IPC.

The background facts of the case are that the respondent no. 2 Sambhu Dayal lodged an FIR on 8.9.2010 alleging that at around 11 to 12 o'clock in the night of 1.9.2010, Prakash Singh (applicant herein) and Gaiden Singh enticed away his 15-16 years old daughter Km. Suman and they were not disclosing anything about her and were threatening to kill. On 8.9.2010 itself, the police recovered the girl. Thereafter her statement under Section 164 CrPC was recorded wherein she stated that she was more than 18 years of age and she was in love with Gaiden and married him on 7.8.2010. She further stated that her parents did not approve this marriage and she ultimately left her parent's house in the night of 1.9.2010 and went to the

house of her husband (Gaiden) on her own sweet will and without any pressure.

After investigation, police filed the chargesheet against Gaiden only. However, during her deposition before the trial court as PW1 on 7.3.2013, the girl Smt. Suman took complete U-turn and stated that on the alleged date and time, accused Gaiden Lal and his companion Prakash (applicant herein) forcibly took her away and kept her for eight days in a house and both of them committed rape on her during all these eight days. After eight days, when the accused persons were shifting her somewhere else, the police rescued her. On 13.3.2013, during her further examination-in-chief, she deposed that she gave her 164 CrPC statement under the pressure of the accused persons as they had threatened to kill her.

Pending cross-examination of PW1 (Smt. Suman), after the above deposition, the prosecution moved an application under Section 319 CrPC, which was allowed by the trial court vide the impugned order dated 9.4.2013 and the present applicant Prakash Singh was summoned to face trial for the offences under Sections 363, 366 and 376 IPC.

Heard learned Counsel for the parties and perused the papers on record.

It is contended on behalf the accused applicant that the trial court summoned the applicant only on the basis of the examination-in-chief of PW1 (victim) and without conducting her cross-examination. I find no substance in this contention as it was held by the Hon'ble Supreme Court in case of *Hardeep Singh v State of Punjab*, **(2014) 3 5 SCC 92**, that power under

Section 319 CrPC can be exercised at the stage of completion of examination in chief and court does not need to wait till the said evidence is tested on cross-examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence.

However, it is required to be noted here that this Court, as an interim measure, stayed the operation and effect of the impugned summoning order on 29.4.2013. Pursuant to this, the trial court separated the trial of the present accused applicant and proceeded with the trial of main accused Gaiden and vide the judgment and order dated 16.10.2014, the trial court acquitted Gaiden of all the charges levelled against him.

While acquitting the main accused Gaiden, the trial court held that the deposition of the victim suffers from many discrepancies. In her 164 CrPC statement, the victim did not level any allegation either against Gaiden or the present applicant Prakash Singh. Thereafter in her examination-in-chief recorded on 7.3.2013 and 13.3.2013, PW1 (victim) stated that Gaiden and Prakash Singh (present applicant) abducted her and committed rape on her and she did not support her 164 CrPC statement stating that the same was given by her under pressure from the accused. However, in her cross-examination done on 5.7.2014, PW1 again took U-turn and admitted that the accused persons neither abducted her nor they committed rape on her and further stated that she gave her statement in examination-in-chief on 13.3.2013 under the pressure of her family members. PW1 further stated she

stood by her earlier statement given under 164 CrPC. The trial court held, *inter alia*, that the case of prosecution is not supported by the medical evidence also.

Section 319 CrPC stipulates that a Court may summon any additional accused if it appears from the evidence, during the course of any inquiry or trial, that such an individual, not being an accused, has committed any offence for which such person should be tried together with the named accused. Sub-section 4 of Section 319 CrPC indicates that the proceeding with respect to the summoned individual, as per Clause (1) of 319 CrPC, may be *de-novo* or joint trial.

However, from the facts and circumstances of the case, discussed hereinabove, it is evident that the trial against the present applicant, even if permitted to continue, would be a futile exercise, as the main accused itself has been acquitted by the trial court and the victim herself has not supported the case of prosecution. In the above circumstances, no useful purpose would be served, even if the trial is permitted against the present applicant.

Consequently, the present C482 application is allowed. Impugned summoning order dated 9.4.2013 passed by the Ist Additional Sessions Judge, Udham Singh Nagar in the Sessions Trial No. 136 of 2011, State v. Gaiden Lal, under Sections 363, 366, 376 IPC, is hereby quashed.

Inform the Court concerned accordingly.

(N.S. Dhanik, J.)