

Devki Nandan Vs. the State of Haryana and Others

Devki Nandan Vs. the State of Haryana and Others

SooperKanoon Citation : sooperkanoon.com/1141285

Court : Punjab and Haryana

Decided On : May-19-2014

Appellant : Devki Nandan

Respondent : The State of Haryana and Others

Judgement :

CRR-1540-2014 1 IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH CRR-1540-2014 Date of decision : 19.05.2014 Devki Nandan ..Petitioner Versus The State of Haryana and others ..Respondents CORAM: HON'BLE MRS.JUSTICE REKHA MITTAL Present: Mr.Surinder Gandhi, Advocate for the petitioner.

REKHA MITTAL, J.(ORAL) The present petition has been preferred against order dated 14.03.2014 passed by the Additional Sessions Judge, Rohtak whereby the applications filed by the prosecution for summoning Ravinder son of Balwan Singh and Narender, Chowkidar of Model School, Kalanaur, Anu @ Faratta son of Satbir have been dismissed by common order impugned in the petition.

Devki Nandan petitioner father of Surekha aged about 17 years lodged FIR No.97 dated 19.04.2013 for offence punishable under Sections 363, 366-A of the Indian Penal Code (in short 'IPC') in Police Station Kalanaur with regard to kidnapping of Surekha by Nitin son of Ved Parkash, the accused already facing trial.

During the course of proceedings before the trial Court, four witnesses namely ASI Chand Kaur PW1, Devki Nandan PW2, Rukmani Devi, wife of Devki Nandan, PW3 and Surekha, daughter of Devki Nandan, PW4 were examined.

The prosecution initially filed an application for summoning Ravinder and Narender as additional accused.

Later, another application for summoning of Anu @ Farratta son of Satbir.

The learned trial Court on appreciation of submissions made by Davinder Kumar 2014.05.23 18:03 I attest to the accuracy and integrity of this document CRR-1540-2014 2 counsel for the parties and material brought on record during trial did not find it justify to summon Ravinder etc. to face the proceedings in exercise of discretion under Section 319 of the Code.

Counsel for the petitioner contends that Devki Nandan PW2 in his statement during trial has attributed specific role to Ravinder, Narender, a friend of Nitin to prove their complicity in the crime, therefore, the learned trial Court seriously erred in rejecting the applications filed by the prosecution.

Surekha PW4 has also corroborated testimony of the complainant that the motorcycle used for committing crime by Nitin was driven by one of his friends but the investigating officer failed to conduct proper investigation and failed to file challan against accomplices of Nitin in the crime.

I have heard counsel for the parties and find no merit in the submissions made by learned counsel for the petitioner.

Indisputably, Devki Nandan is not an eye-witness to the occurrence to depose about the persons present at the spot where Surekha was allegedly kidnapped by Nitin.

Surekha is the best person to say something about the persons involved in the crime and the circumstances under which she was enticed.

The statement of Surekha in her examination-in-chief does not attribute any role to any person except Nitin in regard to her being taken forcibly from the park where

she had gone for morning walk at about 04.30 AM on 19.04.2013.

Surekha was produced before the Court of the Judicial Magistrate after her recovery and her statement under Section 164 of the Code was recorded and during her cross-examination by counsel representing Nitin accused, she was confronted with her version given in her statement recorded under Section 164 of the Code Ex.P6.

In her statement under Section 164 of the Code, she has not attributed any role to any of the persons sought to be Davinder Kumar 2014.05.23 18:03 I attest to the accuracy and integrity of this document CRR-1540-2014 3 summoned as an additional accused.

However, during her cross-examination, she has deposed that the motor-cycle was driven by one of the friends of Nitin but she has not given the particulars of said friend much less that said person exerted any force to induce her to go with Nitin.

It has also come on record during her cross-examination that she knew Nitin since September, 2012 as they were classmates.

As per settled proposition of law, power under Section 319 of the Code is discretionary in nature and is to be used sparingly.

The Constitution Bench of the Hon'ble Supreme Court in Hardeep Singh versus State of Punjab and OtheRs.2014(1) RCR (Criminal) 623 has held that to summon a person as an additional accused the Court has to record satisfaction on the basis of material produced during inquiry envisaged under Sections 202 and 398 of the Code as well as during trial after framing of charge.

It has also been held that there must be material on record which shows complicity of person to be summoned more than a prima-facie case though the said material may not be sufficient to record conviction of the accused even if remains unrebutted.

In view of the testimony of Surekha PW4, I do not find any error much less illegality in the impugned order as would call for interference.

For the foregoing reasons, the petition is dismissed in limine.

(REKHA MITTAL) JUDGE May 19, 2014.

Davinder Kumar Davinder Kumar 2014.05.23 18:03 I attest to the accuracy and integrity of this document

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com