

SC No. 791/23
State Vs Samir & Ors.
FIR No. 1001/15
PS Mahendra Park

09.07.2024

Present: Ms. Promila Singh, Ld. Addl PP for State.

All accused are present on bail.

Sh. Sajid Ahmed, Ld. Counsel for accused Samir.

Sh. N.K. Bansal, Ld. Counsel for accused Shankar
and Monu.

Complainant in person alongwith Ld. Counsel.

Part arguments on charge heard.

It is the case of prosecution that complainant was abducted by five persons. Out of those five persons, three are facing trial before the court. Name of one person Siraj was specifically mentioned by the complainant not only in FIR but also in her statement u/s 164 Cr. PC and there are categorical allegations against Siraj that he played an active role during the incident. The complainant stated in her complaint that accused Sameer who is known to her prior to the incident, called her on her mobile number and asked her to come at Mangal Bazar Road on 07.11.2015 at around 9.30 pm for having a discussion over a case. She stated that on the said date and time when she reached at Mangal Bazar Road near State Bank, Jahangirpuri, accused Sameer was standing near a vehicle and asked her to sit inside the vehicle. In the said vehicle, Siraj and four other persons were already present and accused Sameer also sat in the vehicle. Thereafter, the vehicle started going from GTK Road towards

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Haryana side. Accused Sameer offered cold drink to the complainant and after having the same, she started feeling dizzy. Taking advantage of the same, accused Sameer misbehaved with the complainant and also tried to strangle her neck with her *chunni*. The complainant further stated that Siraj asked accused Sameer to kill her. She alleged that accused Sameer and Siraj had the motive to kill her. She further alleged that accused Siraj and Sameer also gave her beatings. Thereafter, she somehow tried to fled away from their clutches.

IO has not chargesheeted Siraj and he has been kept in Column no. 12 on the pretext that IO interrogated Siraj and he stated that at the time of alleged incident, he was sleeping at the factory where he used to work. IO further stated that he recorded statement of two factory workers who stated that Siraj was with them at around 7-7.30 pm.

During interrogation made by the IO, accused Siraj disclosed that brother of the complainant committed rape with her daughter, for which a case was registered against him and complainant was pressurizing his wife and children to withdraw the said case, else she would falsely implicate Siraj in a false case. From the said interrogation and from the version of the complainant, it is clear that Siraj has the motive to assault or kill the complainant.

The complainant has casted categorical allegations against Siraj, then IO should have chargesheeted Siraj as an accused in this case. IO has no authority to keep Siraj in Column no. 12 merely on the basis of version of Siraj.

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In *Harjeet Singh Vs State of Punjab & Ors.*, AIR 2014 SC 1400, the Constitution Bench of Hon'ble Supreme Court held that the Sessions court may summon an additional accused even if he has not been committed / forwarded for trial by Ld. MM without waiting the stage of Section 319 Cr. PC. While answering question no. 11 in reference, it was held as under :

“A. Considering the fact that under section 319 Cr. PC, a person against whom material is disclosed is only summoned to face trial and in such event under section 319 (4) Cr. PC, the proceedings against such person is to commence from the stage of taking cognizance. The court need not wait for the evidence against the proposed accused to be summoned to be tested by cross examination.”

Therefore, it is categorically held by the Hon'ble Supreme Court that court need not wait for the cross examination of witnesses and can invoke power under section 193 Cr. PC to summon an additional accused at any stage after committal of matter by the Ld. MM.

In the present case, role of accused Siraj is clearly defined by the complainant in the FIR, in MLC and statement u/s 164 Cr. PC. Therefore, the court has no reason to disbelieve her version at this stage. **Considering the totality of circumstances, there is enough material available on record to issue summons to accused Siraj kept in column no. 12, to face trial in the present case. Let the summons be issued against Siraj, accordingly.**

Put up for appearance on 06.08.2024.

(Dhirendra Rana)
ASJ/Spcl. Judge(NDPS)
North/Rohini Courts/09.07.2024