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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 2nd September, 2025***

+ CRL.REV.P. 330/2025 and CRL.M.A. 24949/2025

MS AM

.....Petitioner

Through: Mr. Choudhary Ali Zia Kabir and
Ms. Sija Nair Pal, Advocates.

versus

GOVERNMENT OF STATE OF GNCT OF DELHI ...Respondent

Through: Ms. Priyanka Dalal, APP for the State
with SI Pinki Rana, PS – Malviya
Nagar, Delhi.

CORAM:

HON'BLE MR. JUSTICE ARUN MONGA

ARUN MONGA, J. (ORAL)

1. Assailed herein is an order dated 30.11.2024, passed by the Ld. Additional Sessions Judge (South), Special Court (POCSO), Saket Courts, in the matter of State vs. Mohd Nasir & Anr., arising out of FIR No. 24/2020, registered under Section 21 POCSO Act at Police Station Malviya Nagar.
2. *Vide* impugned order, the learned ASJ dismissed the application of the petitioner under Section 319 Cr.P.C. (corresponding Section 358 of BNSS) seeking to summon the family members and relatives of the petitioner's estranged husband i.e., Ms. A (the victim's grandmother/dadi), Ms. S (paternal aunt), Ms. N (paternal aunt) and Ms. F (paternal aunt) as accused



persons.

3. Case in hand pertains to an incident of child sexual assault, reported by mother of the victim/minor girl. She has fallen out with her husband and there is cantankerous matrimonial acrimony ongoing between the two. She reported that the minor victim was allegedly subjected to sexual abuse by victim's father and cousins of the victim.

4. Briefly stated, the facts of the present case are as follows. On 21.01.2020, FIR No. 24/2020 was registered at the instance of mother of the victim at Police Station Malviya Nagar, South District, under Sections 354/376DB IPC and Sections 6/10/12 of the POCSO Act. It is alleged therein that the minor victim was subjected to sexual abuse by her father and her cousin.

4.1. On 05.09.2020, the case was committed to the Sessions Court. On 23.11.2023, charges were framed against accused persons: (i) Mohd. Nazir (father of the victim) under Sections 354/354A IPC and Section 10 POCSO Act; (ii) Naim Malik (cousin of the victim) under Section 376AB IPC and Section 6 POCSO Act. Later, the mother of the victim was also charged under Section 21 POCSO Act for non-reporting vide orders dated 23.11.2023 and 05.12.2023 on the prosecution's allegation that the mother had failed to report the offence in a timely manner.

4.2. The orders dated 23.11.2023 and 05.12.2023 were challenged before this Court *vide* Crl. Rev. P. No. 247/2024 wherein vide an order dated 21.04.2025, this Court, set aside the charge framed against the mother under Section 21 POCSO Act.

4.3. Subsequently, mother of victim filed an application under Section 319 of Cr.PC for summoning of other family members as aforesaid as accused,



but *Vide* an order dated 30.11.2024, the learned ASJ, Saket Court, dismissed said application imposing cost of ₹20,000 on the applicant/mother of the victim.

4.4. The present petition has now been filed by the mother of the victim challenging the said order dated 30.11.2024.

5. Learned counsel for the petitioner argues that the Learned Trial Court erred in focusing on PW-1's reference to a keypad phone and family relations while ignoring her clear testimony in examination-in-chief regarding the proposed accused persons' knowledge and active role in suppressing incidents of sexual assault.

5.1 The Trial Court wrongly assumed that a keypad phone cannot play videos; in fact, several such devices support video playback. The child victim specifically identified the device and stated that it was used to display pornographic content—relevant and significant evidence that could not be disregarded.

5.2 That the Trial Court misapplied the law under Section 319 CrPC. Evidence emerging in the course of trial—whether in examination-in-chief or cross-examination—constitutes “evidence adduced before the court.” The Supreme Court in *Hardeep Singh v. State of Punjab* (2014) 3 SCC 92 has clarified that such evidence is sufficient to summon additional accused.

5.3 That PW-1's testimony directly revealed: (i) the grandmother's knowledge of the abuse, (ii) her role in suppressing disclosure (“Is baat ko yahan daba do”), (iii) collective efforts of family members to silence the matter, and (iv) physical violence against the mother when she attempted to report. This amounts to more than *prima facie* material to summon additional accused.



5.4 That Section 21 of the POCSO Act imposes a mandatory duty to report child sexual offences. The proposed accused, despite direct knowledge, failed to report and actively suppressed the crime, thereby incurring liability under Section 21.

5.5 That the Trial Court erred in dismissing the application as an attempt “to harass” without appreciating the gravity of PW-1’s testimony regarding suppression of sexual abuse by close family members.

5.6 That the Court placed undue reliance on minor inconsistencies in cross-examination, ignoring that PW-1 is a child witness whose evidence must be assessed with special sensitivity. Minor contradictions cannot negate her consistent core allegations.

5.7 That the Trial Court failed to consider the victim’s vulnerabilities: (i) she is isolated after her mother—her only protector—was arraigned as an accused; (ii) the family is socially and economically disadvantaged while the proposed accused are influential; and (iii) the child is left without support mechanisms mandated under Sections 39 and 40 of the POCSO Act.

5.8 That at the stage of Section 319 CrPC, the standard is not proof beyond reasonable doubt but evidence stronger than mere suspicion. PW-1’s testimony clearly crosses this threshold and establishes prima facie involvement of the proposed accused.

5.9 That the impugned order frustrates the object of the POCSO Act, which is to protect child victims, ensure accountability of all complicit persons and secure the paramount welfare of the child.

5.10 That the imposition of costs of Rs. 20,000/- on the victim’s mother is wholly unjust, punishing the only adult who reported the abuse and creating a chilling effect that deters other parents from reporting child sexual



offences.

6. In light of the aforesaid arguments before proceeding further relevant contents of the application under Section 319 of Cr.PC (corresponding Section 358 of BNSS) be seen at this stage. For ease of reference, the relevant paragraphs of the application are reproduced here under:

“1. This application u/s 319 of the Code of Criminal Procedure, 1973, corresponding to Section 273 of the Bhartiya Nyaya Sanhita (BNSS), seeks to arraign the below listed individuals as accused in the FIR 24/2020. The witnesses’ statements and others evidence has come on record during the ongoing trial. It establishes that the individuals were not only aware, not only failed to report but were in fact accessory to the rape committed upon the child-victim, making them liable for prosecution alongside the accused persons. These individuals are:

- a. Ms. (name redacted)*
- b. Ms. (name redacted)*
- c. Ms. (name redacted)*
- d. Ms. (name redacted)*

2. The mother of the child-victim lost both her parents at the age of 8 years. She grew up as an orphan, without care or education, surviving on the charity of her poor and maternal uncle and aunt. Her uncle also passed away in 2022. The remaining distant relatives sought to wash off any responsibility by arranging a marriage for her, quickly and injudiciously. She was married off to accused Mohammad Nair. He 17 to 20 years ahead of her, oafish, vicious, extremely wealthy, and enjoyed the partiality of large family and many relatives, while the mother had no one and nothing to turn to. Accused Nasir had complete control and power over the mother. Power corrupts.

3. In Indian societal dynamics, it is frequently observed that when a husband fails to accord respect to his wife, this neglect cascades into a broader disregard for her by others. This perception fosters an environment wherein third parties presume that the husband's indifference extends to a tacit sanction for her exploitation. Consequently, emboldened by the husband's apparent neglect, these individuals exploit the wife, treating her as vulnerable and unprotected. She thus becomes a target for exploitation, perceived as fair game by those who believe they can act with impunity.

4. Nasir was fiendish towards the mother from the start. She suffers neglect and violence from Nasir. Rest of the matrimonial family and relatives take a clue and also inflict violence. There are attempts to murder the mother. She does whatever she can. There are pleadings



before the husband and matrimonial family, petitions to relatives, even calls to local police. But she is poor, illiterate and powerless. So, no consequences follow for Nasir, his family or his relatives.

5. *Soon the disregard and depravity against the mother is extended upon her two minor daughters. Her 10-year-old daughter, child-victim, is subjected to multiple instances of sexual assault in increasing degrees, first by her minor relatives and then the father, accused Nasir, himself.*

6. *The ongoing sexual abuse of the child-victim was known by the family. The mother repeatedly approaches them for help. No help is provided. Instead, the mother is coerced to suppress this information. She is in fact physically assaulted, and threatened divorce and abandonment by the family.*

7. *It is at this rock-bottom juncture that the mother places her life on the line, brave all threats, and registered the FIR with the police.*

8. *The case is undergoing trial before this court. The child-victim's testimony and cross examination recorded before the court has disclosed the involvement of several members of the joint family. There are three instances:*

9. *First, the child-victim, PW-1, in her examination-in-chief dated 07.10.2023 states that:*

" My mother woke me up and informed the same to

*.....
slapped him (minor accused, paternal cousin of the victim) and informed my grandmother, who responded by saying, "ki meri beti ka ana jana band karayegi, is baat ko yahan daba do". ("you will put a stop to the family visits of my daughter (mother of the minor accused, paternal cousin of the child-victim), bury this thing here".)*

10. *Second, PW-1 in her cross-examination, dated 25.04.2024, testified that:*

"...It is correct that my mother had told to other family members in my family about the wrong act done by CCL (child in conflict with law) and accused Nasir and Danish." (On page nos. 7 & 8).

11. *Third, PW-1 in her cross-examination dated 20.05.2024, testified that:*

"...It is correct that my mother told about the incidents to all the family members of my father. It is correct that they wanted that the matter should not be reported. It is correct that when my mother informed about the incidents and raised voice, my uncle (chacha) Javed (accused no.3) had beaten my mother. It is correct that my mother wanted to report the matter since beginning but due to atmosphere/pressure in the family, she



could not report."

12. PW-1, in her statements before the police and the magistrate u/s 163 and 164 CrPC, has attempted to make the same disclosures. As such they even if not as clear and conclusive as the testimony before the court, are not in contradiction.

....."

7. I have additionally perused the impugned order dated 30.11.2024. For easy reference, relevant paragraphs of the aforesaid order are reproduced here under:

".....

6. Upon the specific query about the locus of the present applicant/victim to file the application u/s 319 of CrPC, it has been submitted that in the aforesaid case law, the liberty has been given to any person to move the application u/s 319 of CrPC.

7. From the aforesaid discussion, it is clear that the present application has been filed for summoning of proposed accused persons in the garb of summoning u/s 319 of CrPC, the present applicant wants to exercise her right u/s 173(8) of CrPC which is not permissible under law.

8. Further, the judgment relied upon on behalf of the applicant in unambiguous term has held that the summoning of any person as accused is not a routine manner but it should be sparingly in rare cases.

9. Further, it has been clearly held by the Hon'ble Supreme Court in the aforesaid case law that the Court cannot add the person as an accused on the basis of material available in the chargesheet or the case diary but must be based on the evidence adduced before it i.e. in other words the Court must be satisfied that the case for addition of the person as accused not being the accused before it, has been made out on the additional evidence led in before it. This observation of the Hon'ble Supreme Court has made it amply clear that though the power conferred upon the Court is discretionary one, but it must be exercised if circumstances justify and warrant that the other person be tried with the already arraigned accused.

10. Thus, the present applicant was well aware that there was no additional evidence came on record after filing of the chargesheet. Even the reliance has been placed by the applicant/ mother of the victim upon the cross examination conducted on her behalf in order to summon the additional accused. Simultaneously, the victim/ PW1 was cross examined on behalf of the co-accused persons and she has categorically admitted that her mother was not having good relations with her grandparents and used to make complaints against them to the



police prior to the present case. Not only that, in her further cross examination, PWI/ victim has testified that her father was not having any touch mobile phone at the relevant time and this question has been repeated at the asking of Ld. Counsel for applicant mother of the victim and the witness replied in “negative” and, thus, leaving no scope for summoning of the proposed, accused persons for not reporting the matter to the police under section 21 of the POCSO Act. This fact was well within the knowledge of the applicant while moving the present application but it appears that the present application has been filed in order to implicate the proposed accused persons without having any additional evidence after filing of the chargesheet or after recording of the testimony of the witnesses.

11. In view of the aforesaid discussion, this Court is of the view that the present application is gross misuse of the process of law and has been filed only with a view to harass the proposed accused persons without having any merit and on the basis of an affidavit of the counsel who is having no authority under the Advocates Act or any other law to be appointed as an advocate of the victim who is minor through the co-accused/mother of the victim and therefore, the present application stands dismissed with costs of Rs. 20,000/- to be deposited by the applicant/mother of the victim with DLSA, South.

12. Application is disposed of accordingly.

13. Be put on the date already fixed i.e. 13.02.2025.”

8. In the aforesaid backdrop, having heard learned counsel for petitioner and perused the impugned order and the case file, at the outset itself, I may observe that I am one with the opinion of the learned ASJ and concur with the reasoning contained therein. However, I have my own reasons to add per discussion hereinafter.

9. The arraignment of the grandmother and paternal aunts as accused appears to be nothing but an endeavour of the victim’s mother motivated by vengeance arising out of matrimonial acrimony with her husband. She has gone to the extent of implicating the uninvolved grandmother (Dadi) and 3 paternal aunts.

10. First and foremost Section 319 of Cr.PC (corresponding with Section 358 of BNSS) be seen which reads as under:-



“319. Power to proceed against other persons appearing to be guilty of offence.—

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then—

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

11. Section 319 thus CrPC requires that *fresh, cogent evidence* emerge during trial that indicates the role/complicity of other persons in the offence and provided, the evidence so emerged is believable and acceptable. Here, the child’s testimony about the grandmother and family members does not disclose new facts beyond what was already known at the time of filing/charge-sheeting. The allegations are general, vague, and not supported by any independent corroboration. Hence, the “threshold” for summoning additional accused is not met.

12. Section 319 should be used sparingly, only where evidence is strong enough to indicate the possibility of conviction. Mere suspicion or statements containing generalised allegations are insufficient. In this case, PW-1’s statements about “family suppression” are inconsistent and cannot



reasonably lead to conviction of the proposed accused.

13. The victim's testimony about the mobile phone and involvement of family members is riddled with contradictions between examination-in-chief and cross-examination. The "keypad phone" reference negates the statement of its use to display pornographic content and undermines its reliability. The Trial Court rightly concluded that her evidence did not cross the legal threshold of credibility required under Section 319.

14. The application was filed not in the child's interest but as an attempt by the mother to target her in-laws amid her own matrimonial acrimony. The Trial Court was correct in observing that the mother was "arm-twisting" and using the child's testimony to settle personal disputes.

15. Section 21 applies only where there is a *clear and established* failure to report despite knowledge. In this case, there is no independent proof that the grandmother or other family members had *direct, actual knowledge* of the alleged sexual assaults at the relevant time. PW-1's general statements about "family knowing" are insufficient to create criminal liability under Section 21.

16. Summoning additional accused is a serious step that impacts his liberty. Courts must guard against over-extension of criminal liability based on unacceptable, uncorroborated and inconsistent testimony of a minor child, especially when influenced by an interested parent, who has a motive as in this case.

17. The main trial against the already charge-sheeted accused is ongoing. The child's rights and protection under POCSO remain intact. Multiplying accused unnecessarily without any unacceptable evidence does not serve the child's best interest but risks prolonging and complicating the trial.



18. The application under Section 319 CrPC is thus wholly misconceived. No fresh or substantive evidence has emerged in trial; the child's testimony about her grandmother and other family members merely repeats vague, uncorroborated claims already known at the time of charge-sheeting.

19. It is also evident that the application is driven not by the child's welfare but by the mother's attempt to arm-twist and settle scores with her estranged husband in the backdrop of their matrimonial acrimony, by dragging elderly and uninvolved relatives of the husband into criminal proceedings. Section 21 of the POCSO Act is not attracted, as there is no acceptable proof that the proposed accused had direct knowledge of the assaults.

20. The matter becomes even more disturbing because the mother has chosen to use her own minor daughter as a weapon in this personal battle, thereby exploiting the child's trauma for collateral purposes. Such conduct not only undermines the integrity and fairness of the proceedings but also trivialises the gravity of offences under the POCSO Act by reducing them to instruments of vengeance. The shield of child protection laws cannot be converted into a sword for vindictive prosecutions.

21. The imposition of Rs. 20,000/- costs by learned Trial Court is well justified to deter frivolous or vindictive litigation. Given the unacceptable evidentiary basis of the application and its potential misuse to harass elderly parents and his relatives, the Trial Court rightly exercised its discretion. To summon additional accused on the basis of such inconsistent and unacceptable testimony would be a serious abuse of process, compromise the rights of the innocent persons and needlessly prolong the trial already underway.



22. Having analysed, as above, I am constrained to observe that the endeavour of the victim's mother is nothing short of a gross misuse of the judicial process. What is projected as a quest for justice is, in fact, an exercise in arm-twisting, conceived not to advance the cause of the child but, ill conceived to settle personal scores because of deep-seated hatred against her husband. The attempt to array aged grandparents and paternal aunts, who appear to be entirely gullible and had no role in the alleged incidents, reflects a clear design to entangle innocent family members of the petitioner's estranged husband in protracted criminal litigation.

23. I find no grounds to interfere. Petition is accordingly dismissed with costs of Rs. 10,000/- to be paid to Delhi Legal Services Authority (DLSA) for make the State to undergo needless and vexatious litigation in this Court, driven out of vengeance on the part of the petitioner in sheer abuse of process of law. Registry to ensure compliance of payment of cost.

24. Pending application, if any, shall also stand disposed of.

ARUN MONGA, J

SEPTEMBER 2, 2025/kd