

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-1123-2014 (O&M)
Date of decision: 09.07.2015

Kulbir Singh

... Petitioner

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Sanjay Verma, Advocate
for the petitioner.

Mr. Daljit Singh Virk, AAG, Punjab.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

Feeling aggrieved against the impugned order dated 10.10.2013 passed by learned Additional Sessions Judge, Ferozepur, whereby order dated 21.05.2013 passed by learned Judicial Magistrate 1st Class, Ferozepur, allowing the application under Section 319 of the Code of Criminal Procedure ('Cr.P.C.' for short), summoning Jaswinder Kaur @ Bholi, was set aside, allowing the revision petition filed by Jaswinder Kaur @ Bholi, complainant has approached this Court by way of instant petition under Section 482 Cr.P.C., for setting aside the impugned order.

Notice of motion was issued and pursuant thereto, reply by way

of affidavit dated 26.04.2014 was filed.

Learned counsel for the petitioner submits that learned trial Court has rightly passed the order dated 21.05.2013 under Section 319 Cr.P.C., summoning Jaswinder Kaur @ Bholi as additional accused to face the criminal trial. Said order was based on correct appreciation of facts as well as the relevant provisions of law. However, since the learned Additional Sessions Judge misdirected himself, while passing the impugned order, the same was not sustainable in law. Learned counsel for the petitioner further submits that there was sufficient evidence available on the record, which was enough to make out a prima facie case against Jaswinder Kaur, to summon her as an additional accused. Learned Additional Sessions Judge was exercising his limited jurisdiction, while deciding the revision petition and no interference was warranted at the hands of learned Additional Sessions Judge, because of which the impugned order was liable to be set aside. He prays for allowing the present petition, by setting aside the impugned order.

On the other hand, learned counsel for the State submits that since during the course of investigation, Deputy Superintendent of Police, Ferozepur declared Smt. Jaswinder Kaur as innocent, the impugned order passed by learned Additional Sessions Judge was factually correct and legally justified which deserves to be upheld. He further submits that the learned Additional Sessions Judge has discussed each and every relevant aspect of the matter in the correct perspective, before arriving at a judicious conclusion. He prays for dismissal of the present petition.

Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful

consideration to the contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant one is not a fit case warranting interference at the hands of this Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C., for the following more than one reasons.

The issue is no more res integra. In the case of **Hardeep Singh Vs. State of Punjab and ors., 2014 (3) SCC 92**, the Hon'ble Supreme Court has held in para 99 of the judgment that test that has to be applied for passing summoning order under Section 319 Cr.P.C., is the one which is more than prima facie and not as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. It was further held by the Hon'ble Supreme Court that in the absence of such satisfaction, the Court should refrain from exercising power under Section 319 Cr.P.C. The law laid down by the Hon'ble Supreme Court in its Constitution Bench judgment in Hardeep Singh's case (supra) was further reiterated in the case of **Babubhai Bhimabhai Bokhiria and anr. Vs. State of Gujarat and ors., 2014 (5) SCC 568**.

The relevant observations made by the Hon'ble Supreme Court in paras 7 & 8 of its judgment in Babubhai Bhimabhai Bokhiria's case (supra), which can be gainfully followed in the present case, read as under: -

“Before we proceed to deal with the evidence against the appellant and address whether in light of the evidence available, power under Section 319 of the Code was validly exercised, it would be expedient to understand the position of law in this regard. The issue regarding the scope and extent of powers of

the court to arraign any person as an accused during the course of inquiry or trial in exercise of power under Section 319 of the Code has been set at rest by a Constitution Bench of this court in the case of Hardeep Singh v. State of Punjab, 2014 (1) R.C.R. (Criminal) 623: 2014 (1) Recent Apex Judgments (R.A.J.) 384: JT 2014 (1) SC 412. On a review of the authorities, this Court summarized the legal position in the following words:

“98. 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.

99. 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 un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C.

Section 319 of the Code confers power on the trial court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of prima facie case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher.”

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court, in the cases referred to hereinabove, this Court is of the view that the learned Additional Sessions Judge committed no error of law, while passing the impugned order and the same deserves to be upheld, for this reason also.

During the course of hearing, learned counsel for the petitioner failed to point out any jurisdictional error or patent illegality in the impugned order passed by the learned Additional Sessions Judge, which may warrant interference at the hands of this Court. Further, although the inherent powers

of this Court under Section 482 Cr.P.C. are wide enough, yet it is equally true that the powers under Section 482 Cr.P.C. are to be exercised sparingly and with circumspection.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the learned Additional Sessions Judge did not exceed his jurisdiction, while passing the impugned order, which deserves to be upheld. Present petition has been found wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

09.07.2015
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