

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

**Crl. Misc. No. M-11710 of 2014
Date of Decision: 04.9.2015.**

Gaurav Dang

.....Petitioner

Vs.

Sunita Jain and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. K.S.Dadwal, Advocate
for the petitioner.

Mr. Bhup Singh, Advocate
for respondents No. 1 and 2.

Mr. J.S.Sekhon, AAG, Punjab.

.....

SABINA, J.

Petitioner has filed this petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) challenging the order dated 5.2.2014 (Annexure P-7).

Learned counsel for the petitioner has submitted that respondents No. 1 and 2 in connivance with their co-accused had committed the alleged offence. The learned Trial Court had rightly ordered the summoning of respondents No. 1 and 2 on an application moved by the prosecution under Section 319 Cr.P.C. The Court of Revision has erred in setting aside the order passed by the Trial Court. In support of his arguments, learned counsel has placed reliance on '**Hardeep Singh versus State of Punjab and others, 2014(1) R.C.R. (Criminal) 623**', wherein it was held as under:-

“Question Nos. 1 & III

Q.1 What is the stage at which power under Section

319 Cr.P.C. can be exercised?

AND

Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused. Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of

the charge-sheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Q.II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. IV

Q. IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took

cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No. V

Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh.

The matters be placed before the appropriate Bench for final disposal in accordance with law explained

hereinabove.”

Learned counsel for respondents No. 1 and 2, on the other hand, has opposed the petition and has submitted that so far as the said respondents are concerned, they were subsequent purchasers and had no knowledge qua the offence, if any committed by their vendors. Respondents No. 1 and 2 were, in fact, themselves victims.

Prosecution story, in brief, is that complainant-petitioner had purchased the plot measuring 9 marlas vide sale deed dated 19.1.2009 and possession of the property in question was handed over to the complainant. Mutation was also sanctioned in favour of the complainant. Amarjit Singh purchased portion measuring 4 kanals 16 marlas vide sale deed dated 29.1.1988. Amarjit Singh sold 13 kanals of land to Surjit Singh and Ajmer Kaur and mutation was sanctioned in favour of the purchasers. Amarjit Singh sold 7 marlas of land to Sukhdev Singh and mutation was sanctioned in the name of the purchaser. Thus, Amarjit Singh had sold his entire share out of the land in dispute. Accused Swaran Singh and Sukhdev Singh in connivance with other accused sold 168 square yards out of the khasra number in question vide sale deed dated 21.7.2003 to accused Rajiv Kumar and Ashok Kumar. Accused Swaran Singh and Sukhdev Singh further sold plot measuring 230 square yards to Rajiv Kumar and Ashok Kumar vide sale deed dated 21.7.2003. Ashok Kumar and Rajiv Kumar further sold the said property to accused N.K.Jain vide sale deed dated 13.11.2003 who further sold the same to accused Sunita Jain vide sale deed dated 16.7.2008. Accused Sunita Jain was declaring herself to

be owner of the property in question, although, she had no concern with the same.

During investigation of the case, respondents No. 1 and 2 i.e. Sunita Jain and N.K.Jain were found innocent. Challan was presented against Sukhdev Singh, Swaran Singh, Rajiv Kumar and Ashok Kumar. During trial, prosecution moved an application under Section 319 Cr.P.C. for summoning respondents No. 1 and 2 to face trial as additional accused.

Section 319 Cr.P.C. reads as under:-

“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 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.”*

In the present case, as per the FIR, Swaran Singh and Sukhdev Singh have sold the plots to accused Ashok Kumar and Rajiv Kumar. So far as respondents No. 1 and 2 are concerned, they have purchased the property in question from accused Ashok Kumar and Rajiv Kumar. Thus, respondents No. 1 and 2 can be described as subsequent purchasers. So far as respondents No. 1 and 2 are concerned, they cannot be attributed any criminal conspiracy at the time of execution of the sale deeds by Swaran Singh, and Sukhdev Singh in favour of Ashok Kumar and Rajiv Kumar. Apparently, due to this reason, respondents No. 1 and 2 were found innocent during investigation. In these circumstances, the learned Court of Revision rightly allowed the revision petition filed by respondents No. 1 and 2 and set aside the order passed by the Trial Court whereby respondents No. 1 and 2 were ordered to be summoned to face the trial as additional accused. There is no quarrel with the proposition of law settled by the Apex Court in *Hardeep Singh's* case (supra) but in the facts and circumstances of the present case, application moved by the prosecution under

Section 319 Cr.P.C. for summoning respondents No. 1 and 2 as additional accused, was liable to be dismissed.

No ground for interference is made out.

Dismissed.

**(SABINA)
JUDGE**

September 04, 2015
Gurpreet