

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

CRM-M-3393 of 2013 (O&M).

Date of Decision: May 26, 2015.

Pardeep Kumar and anotherPetitioners.

VERSUS

State of Punjab and anotherRespondents.

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR.

1. Whether the judgment should be reported in the digest? Yes/No
2. Whether to be referred to the Reporter or not? Yes/No

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

Mr. Ashish Sanghi, Deputy Advocate General, Punjab
for respondent No.1-State.

Mr. Abhishek Arora, Advocate for respondent No.2.

SNEH PRASHAR, J.

This petition invoking the provisions of Section 482 of the Code of Criminal Procedure (in short, "Cr.P.C.") was filed by petitioners Pardeep Kumar and Satish Mahajan, for quashing of order dated 11.07.2012 passed by learned Judicial Magistrate Ist Class, Ludhiana, vide which they were summoned as an additional accused, as well as order dated 16.01.2013 passed by learned Additional Sessions Judge, Ludhiana whereby their revision petition was dismissed.

2. Succinctly the facts recapitulated are that on a complaint lodged by Geeta daughter of Som Parkash, First Information Report No.50 dated 25.03.2011 under Sections 379, 419, 420 and 120-B of the Indian Penal Code (in short, "I.P.C.") was registered at Police Station Division No.6, Ludhiana. The allegations of the complainant were that her parents, namely, Kusum Rani and Som Parkash were having joint bank account no.31302732498 with State Bank of India, Jamalpur, Ludhiana, in which an amount of Rs.2,27,300/- was lying deposited. On 31.12.2010 at about 1:15 p.m. she had gone to the ATM of Punjab National Bank, Chandigarh Road, Ludhiana, for withdrawal of some amount. As she was not conversant with the use of ATM card, she could not open the door of the ATM. One Sunny alongwith his friend was standing outside the ATM room and he opened the door for her. She went inside but could not operate the ATM on which Sunny sent his friend inside the room who helped her in operating the ATM for withdrawal of Rs.5000/-. That person returned the ATM card to her but in the meantime he noted the PIN code of the card. On 04.01.2011 at about 10:30 a.m., she again went to operate the ATM near Vardhman, but found her card blocked. She went to State Bank of India but there also the card was found blocked. On 05.01.2011, she went to the Bank at Jamalpur and came to know that from her account except for Rs.17,000/- the entire amount had been withdrawn through different ATMs. During conversation with the manager there, some more amount was withdrawn through ATM and only an amount of Rs.6100/- was left in her account.

The complainant stated that she tried to enquire the identity of

friend of Sunny, who had helped her in operating the ATM, but he did not give his complete identity particulars and stated that he may be known to the Managers. She then approached Satish Mahajan, Manager, Punjab National Bank, and requested him to supply the CCTV footage of the ATM but expressing lack of time he stated that he will take out the video within 10-15 days. Pardeep Kumar, CCTV Manager, also put off the matter saying that the official, who had to take out the video, had gone to Sunam and then said that he had gone to Bhatinda. He also informed that an expenditure of Rs.11,000/- will be incurred on taking out the video, then stated that the expenditure will be of Rs.5000/- and then that he will get the work done for an amount of Rs.500/-. On 06.01.2011, she approached the police but no action was initiated by them. On 25.01.2011, when she again went to Punjab National Bank and asked the managers to take out the video, they informed that there was no electricity supply to their ATM during the period 30.12.2010 to 06.01.2011 whereas on no earlier occasion it was so stated by them.

The complainant added that they had suffered loss of Rs.2,12,300/-.

3. During investigation, Sunny was arrested and a charge sheet was filed against him.

After the statement of complainant Geeta was recorded by learned trial Court, an application under Section 319 Cr.P.C. was filed by the prosecution for summoning Satish Mahajan and Pardeep Kumar (petitioners) as additional accused.

The application was allowed by learned Judicial Magistrate Ist Class, Ludhiana, vide order dated 11.07.2012. The petitioners filed a revision petition against the said order which was dismissed by learned Additional Sessions Judge, Ludhiana, vide order dated 16.01.2013.

4. Feeling aggrieved and invoking the provisions of Section 482 Cr.P.C., the petitioners have preferred the instant petition.

5. Heard the submissions made by Mr. K.S. Dadwal, learned counsel representing the petitioners, Mr. Ashish Sanghi, learned Deputy Advocate General, representing the State of Punjab and Mr. Abhishek Arora, learned counsel representing respondent No.2.

6. Learned counsel for the petitioners argued with vehemence that in the First Information Report the complainant attributed no role to the petitioners during the occurrence in which money from the account of her parents held with Punjab National Bank, was fraudulently withdrawn through different ATMs. Only once i.e. on 31.12.2010 she had approached the ATM of Punjab National Bank and on that day she admits that she had withdrawn Rs.5,000/- from the account of her parents. In case, other ATMS were used by some unknown persons for withdrawal of money from the account of her parents, the petitioners could not be blamed for the same. There was nothing to indicate that the petitioners had cheated the complainant.

Learned counsel contended that as admitted by the complainant, the ATM card was in the name of her parents and as per rules the ATM card can be used only by the person in whose name it exists. The

very fact that the complainant was using the ATM card of her parents shows that she herself might be responsible for withdrawal of the money from the account of her parents through different ATMs.

7. It was further argued by learned counsel that the complainant in her statement admitted existence of CCTV cameras in all the ATMs. She also stated that she had seen the videos but could not identify the persons who had withdrawn the amount from her parents' account through ATM. She also admitted that in the photos there was no photograph of Sunny.

8. Learned counsel urged that the Court can summon a person as an additional accused only when there is substantive evidence against him and existence of mere prima facie evidence even is not sufficient. The power to summon a person as an additional accused is an extraordinary power and should be used very sparingly that too if compelling reasons exist. The said power cannot be exercised so as to conduct a fishing enquiry. Submitting that the petitioners were senior officials of the Bank and the evidence of the prosecution consisting of statement of complainant was not substantive and sufficient to prove that they have committed any offence for which they could be tried, learned counsel prayed for quashing of the impugned orders. To support his arguments, learned counsel relied upon *Harjinder Kumar vs. State of Punjab and others, 2012(3) R.C.R. (Crl.) 105*; *Sidharth Shanker @ Mannu vs. State of Haryana, 2012(1) R.C.R. (Crl.) 876*; and *Sarojben Ashwinkumar Shah etc. vs. State of Gujarat and others, 2011(3) R.C.R. (Crl.) 852 (SC)*.

Learned counsel also relied upon *Hardeep Singh vs. State of*

Punjab and others, 2014(1) Recent Apex Judgments 384 wherein it has been held as under:-

“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.

Thus, we hold that through 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. In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words “for which such person could be tried together with the accused.” The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused.”

9. The arguments of learned counsel for the petitioners were refuted by learned Deputy Advocate General, representing the State of Punjab as well as learned counsel representing the complainant. They submitted that while lodging the First Information Report, the complainant attributed specific allegations to the petitioners. She mentioned that the unknown person whose identity has been specifically withheld by accused Sunny and the petitioners had noted the PIN code number of her ATM card and had changed the original with a duplicate one and thereafter the entire

amount from the account of her parents was withdrawn through different ATMs. They also submitted that being approached by the complainant, the petitioners intentionally first kept putting off her request on one reason or the other to take out the CCTV footage dated 31.12.2010 and also demanded money from her for that purpose. Ultimately, after several days and repeated visits by her they informed that because of some technical problem the CCTV camera of their ATM was not working during the period 30.12.2010 to 06.01.2011. It was also submitted that Sunny, the accused facing trial, was the driver of petitioner No.1 Satish Mahajan. It is in the said set of facts that Section 120-B I.P.C. had been added to the case.

10. Section 319 Cr.P.C. allows the Court to proceed against any person who is not an accused in a case before it. He can either be a person named in column-II of the charge sheet filed under Section 173 Cr.P.C. or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence. In ***Hardeep Singh case (supra)***, Hon'ble Apex Court held as under:-

“What is essential for the purpose of the section is that there should appear some evidence against a person not proceeded against and the stage of the proceedings is irrelevant. Where the complainant is circumspect in proceeding against several persons, but the court is of the opinion that there appears to be some evidence pointing to the complicity of some other persons as well, Section 319 Cr.P.C. acts as an empowering provision enabling the court/Magistrate to initiate proceedings against such other persons. The purpose of Section 319 Cr.P.C. is to do complete justice and to ensure that persons who ought to have been tried as

well are also tried. Therefore, there does not appear to be any difficulty in invoking powers of Section 319 Cr.P.C. at the stage of trial in a complaint case when the evidence of the complainant as well as his witnesses is being recorded.

Thus, the application of the provisions of Section 319 Cr.P.C., at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 Cr.P.C. can be exercised only on the basis of the evidence adduced before the court during a trial.”

11. Reverting to the instant case, petitioners were specifically named for commission of offence by the complainant in the FIR. She reiterated her allegations when she appeared in the witness box before the Court during the trial. Learned trial court had sufficient evidence pointing to the complicity of the petitioners. Certainly, the evidence/material put forth in the final report submitted by the prosecution under Section 173 Cr.P.C. and the evidence led in the court is more than prima facie case as required for consideration at the time of framing of charge. Upholding the order of learned trial court, the findings of learned Additional Sessions Judge were as under:-

“After giving my thoughtful consideration to the rival submissions and on careful perusal of the impugned order dated 11.7.2012, the record of learned Trial Court, the report under Section 173 of Cr.P.C., the written complaint filed, statement made by the complainant, coupled with due assistance rendered, the court does not find any merit in the submissions put forth by ld. counsel for the revisionists. It is pertinent to mention that the learned trial court has passed a well reasoned order, wherein, it has been specifically observed, as to the complainant having levelled the specific allegations against the revisionists and further in the written complaint also there is specific mention of the revisionists by name and as per the provisions enshrined under Section 319 Cr.P.C., in case the court considers that besides the accused sent for facing trial, some other persons has also committed the offence along with the accused facing the trial, who has

though not been sent for facing trial, he can be summoned by invoking the provisions enshrined under Section 319 Cr.P.C. The learned trial court has made specific mention that the complainant had filed the complaint, wherein she had named the revisionists and even while appearing into the witness box, she has named both of the revisionists. Thus, as such, no interference is warranted in the impugned order.”

Learned counsel for the petitioners could demonstrate no illegality or perversity in the above findings which could result in abuse of process of the Court.

Thus, finding no ground for intervention in the order dated 11.07.2012 passed by learned Judicial Magistrate Ist Class, Ludhiana and order dated 16.01.2013 passed by learned Additional Sessions Judge, Ludhiana, the petition is dismissed.

(SNEH PRASHAR)
JUDGE

May 26, 2015
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