

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-34573-2013
Date of decision: 17.08.2015

Satya Devi

... Petitioner

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. H.S. Saggu, Advocate
for the petitioner.

Mr. K.D. Sachdeva, Addl. AG, Punjab.

Mr. Ashish Gupta, Advocate
for respondents No.2 & 3.

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.(ORAL):

Present petition is directed against the order dated 08.10.2012 (Annexure P-5) passed by the learned Judicial Magistrate 1st Class, Moga, whereby petitioner was summoned under Section 319 of the Code of Criminal Procedure ('Cr.P.C.' for short) and also the order dated 30.08.2013 (Annexure P-6) passed by learned Sessions Judge, Moga, dismissing the revision petition filed by the petitioner.

Notice of motion was issued and pursuant thereto, reply was filed on behalf of the State.

Shorn of detailed background of the case, it would suffice to note that FIR No.148 dated 11.09.2007 under Sections 325, 323, 34 IPC was

registered at Police Station City (South), District Moga. The investigating agency found the petitioner as innocent. Challan was presented only against Rajiv Kumar son of the petitioner. During the course of trial, an application under Section 319 Cr.P.C. came to be filed which was allowed by the learned Judicial Magistrate 1st Class, Moga vide impugned order dated 08.10.2012 (Annexure P-5).

Feeling aggrieved, petitioner filed her revision petition which also came to be dismissed by the learned Sessions Judge vide order dated 30.08.2013 (Annexure P-6). Hence this petition, at the hands of the accused-petitioner.

Learned counsel for the petitioner submits that both the learned Courts have misdirected themselves, while passing their respective impugned orders. He further submits that there was no evidence, whatsoever, available against the petitioner which could have been said to be sufficient for summoning the petitioner, as an additional accused to face the criminal trial. Since both the learned Courts have miserably failed to appreciate the relevant principles of law applicable in the present case, the impugned orders have resulted in miscarriage of justice and the same are liable to be set aside. He prays for setting aside the impugned order, by allowing the present petition.

On the other hand, learned counsel for the State submits that there is no illegality in either of the impugned orders passed by the learned Courts. Impugned order passed by the learned Magistrate was fully justified. Similarly, the learned Sessions Judge committed no error of law, while passing the impugned order. Both the impugned orders deserve to be upheld. He prays for dismissal of the present petition.

Similarly, learned counsel for the complainant submits that petitioner was very much involved in the commission of crime, because of

which she is not entitled to invoke the inherent jurisdiction of this Court under Section 482 Cr.P.C. He further submits that since both the learned Courts have proceeded on a factually correct and legally justified approach, while passing their respective impugned orders, the same deserve to be upheld. He also 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 rival contentions raised, this Court is of the considered opinion that in the given fact situation of the present case, instant one has been found to be 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.

A bare combined reading of both the impugned orders would show that the learned Courts have proceeded on a misconceived approach, while observing that the requirement for summoning under Section 319 Cr.P.C. was only that a prima facie case is made out against the accused to be summoned. The relevant observation made by the learned Additional Sessions Judge in para 8 of his impugned order dated 30.08.2013 (Annexure P-6), at page 39 of the paper book, reads as under: -

“Thus, the only requirement of Section 319 Cr.P.C. is that there should be prima facie evidence of commission of an offence against the said person who is to be summoned as an additional accused.”

Both the impugned orders based on the abovesaid view cannot be sustained for the reason that the impugned orders run counter to the law laid down by the Hon'ble Supreme Court in its Constitution Bench judgment in the case of **Hardeep Singh Vs. State of Punjab and others, 2014 (3) SCC 92** and

also in its later judgment in the case of **Babubhai Bhimabhai Bokhiria and another Vs. State of Gujarat and others, 2014 (5) SCC 568.**

The relevant observations made by the Hon'ble Supreme Court in paras 49 to 53 of its Constitution Bench judgment in **Hardeep Singh's** case (supra), which aptly apply to the facts of the present case, read as under: -

“It is thus aptly clear that until and unless the case reaches the stage of inquiry or trial by the court, the power under Section 319 Cr.P.C. cannot be exercised. In fact, this proposition does not seem to have been disturbed by the Constitution Bench in Dharam Pal (CB). The dispute therein was resolved visualizing a situation wherein the court was concerned with procedural delay and was of the opinion that the Sessions Court should not necessarily wait till the stage of Section 319Cr.P.C. is reached to direct a person, not facing trial, to appear and face trial as an accused. We are in full agreement with the interpretation given by the Constitution Bench that Section 193Cr.P.C. confers power of original jurisdiction upon the Sessions Court to add an accused once the case has been committed to it.

In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor the legislature could have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the

prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 Cr.P.C.

Accordingly, we hold that the court can exercise the power under Section 319 Cr.P.C. only after the trial proceeds and commences with the recording of the evidence and also in exceptional circumstances as explained herein above.

There is yet another set of provisions which form part of inquiry relevant for the purposes of Section 319 Cr.P.C. i.e. provisions of Sections 200, 201, 202, etc. Cr.P.C. applicable in the case of Complaint Cases. As has been discussed herein, evidence means evidence adduced before the court. Complaint Cases is a distinct category of criminal trial where some sort of evidence in the strict legal sense of Section 3 of the Evidence Act 1872, (hereinafter referred to as the 'Evidence Act') comes before the court. There does not seem to be any restriction in the provisions of Section 319 Cr.P.C. so as to preclude such evidence as coming before the court in Complaint Cases even before charges have been framed or the process has been issued. But at

that stage as there is no accused before the Court, such evidence can be used only to corroborate the evidence recorded during the trial for the purpose of Section 319 Cr.P.C., if so required.

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. So far as its application during the course of inquiry is concerned, it remains limited as referred to hereinabove, adding a person as an accused, whose name has been mentioned in Column 2 of the charge sheet or any other person who might be an accomplice.”

After the detailed discussion and referring to the earlier case law on the subject, the Hon'ble Supreme Court came to its conclusion in para 98 & 99 of the judgment in **Hardeep Singh's** case (supra). However, for the sake of brevity and to avoid repetition, relevant observations made by the Hon'ble Supreme Court in paras 7 & 8 of its later judgment in the case of **Babubhai Bhimabhai Bokhiria** (supra), reiterating the abovesaid view taken in its Constitution Bench judgment in **Hardeep Singh'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 summarised 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 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 led 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 an 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 case in hand and respectfully following the law laid down by the Hon'ble Supreme Court in the cases referred to hereinabove, it is unhesitatingly held that since the impugned orders passed by both the learned Courts are contrary to the law laid down by the Hon'ble

Supreme Court, the same cannot be sustained, for this reason also.

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 since both the impugned orders have been found suffering from patent illegality as well as running contrary to the law laid down by the Hon'ble Supreme Court, the same cannot be sustained. Accordingly, both the impugned orders dated 08.10.2012 (Annexure P-5) and 30.08.2013 (Annexure P-6) passed by the learned Judicial Magistrate 1st Class, Moga and learned Additional Sessions Judge, Moga respectively, are hereby set aside, so as to avoid any further misuse of process of law and also to secure the ends of justice.

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

[RAMESHWAR SINGH MALIK]
JUDGE

17.08.2015
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