

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

CRM-M-7171 of 2015
Date of Decision: 04.03.2015

Balwinder Singh
Versus
....Petitioner

Labh Singh and others
...Respondents

CORAM: HON'BLE MRS. JUSTICE SNEH PRASHAR

Present: Mr. Balbir Singh Jaswal , Advocate
for the petitioner.

SNEH PRASHAR J.(Oral)

1. Aggrieved by order dated 01.05.2014 passed by learned Judicial Magistrate First Class, Ajnala and the order dated 19.12.2014 passed by learned Additional Sessions Judge, Amritsar rejecting the application filed by the petitioner-complainant to summon Parkash Kaur and Sahib Singh as additional accused in case FIR No.66 dated 24.09.2011 under Sections 420 and 506 of the Indian Penal Code, registered at Police Station Ramdas, District Amritsar, the instant petition under Section 482 of the Code of Criminal Procedure (for short ' the Cr.P.C.) was filed.

2. The petitioner submitted that he lodged a complaint against four accused namely, Balwinder Singh, Labh Singh, Prakash Kaur and Sahib Singh. The complaint was thoroughly investigated by Deputy Superintendent of Police, Ajnala and on approval of his report by Senior Superintendent of Police First Information Report No.66 dated 24.09.2011 under Sections 420 and 506 of the Indian Penal Code (for short ' IPC') was registered. Subsequently, during investigation the police found that no case against Prakash Kaur and Sahib Singh is made out. As such only Balwinder Singh and his son Labh Singh were challaned and the name of the other two

accused were mentioned in column No.2 of the challan. The two accused against whom the challan was filed were chargesheeted. During evidence the prosecution examined complainant-Balwinder Singh as PW1 and there being specific allegations against Prakash Kaur and Sahib Singh in the statement of Balwinder Singh-PW1, the State filed an application invoking the provisions of Section 319 Cr.P.C for summoning the said two persons as additional accused.

As indicated above the application was dismissed by learned trial Court vide order dated 01.05.2014 against which the petitioner preferred a revision petition which was also dismissed by learned Additional Sessions Judge vide order dated 19.12.2014.

3. Heard the submissions made by Mr. Balbir Singh Jaswal , Advocate representing the petitioner and record perused.

4. Learned counsel for the petitioner argued that at the time of lodging the First Information Report the complainant had specifically stated that all four accused namely, Balwinder Singh, Labh Singh, Prakash Kaur and Sahib Singh had come to his house in their car and giving assurance of sending his son abroad, had taken Rs. 6 lacs from him. Same was the version of the eye-witnesses when their statements during enquiry were recorded. Complainant-Balwinder Singh when stepped into the witness box reiterated on oath his allegation against all four accused as contained in the First Information Report. A specific role having been attributed to Prakash Kaur and Sahib Singh, they ought to have been summoned by learned trial Court to face trial alongwith the other accused.

5. There appears to be no force in the arguments of learned counsel for the petitioner. The basic requirements for invoking the

provisions of section 319 Cr.P.C. had been explained by the Apex Court in **Michael Machado and another Vs. Central Bureau of Investigation, 2000(2) RCR (Criminal) 75** as under:

“The basic requirements for invoking Section 319 of the code is that it should appear to the Court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It was also held that the discretionary power so conferred by the above said section should be exercised only to achieve criminal justice.”

Similarly, in **Vikram and others Versus State of Haryana 2010(3) Law Herald (P&H) 2546** this Court had laid down that 'a person should not be summoned to face trial even if a prima facie case is made out against him. A person should be summoned only when the Court finds that evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.'

It was further held that 'section 319 of the Code confers discretionary jurisdiction on the Court to summon a person as additional accused to face trial. This is an extraordinary power conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken'.

6. Considering the facts and circumstances of the case and the reason explained in the application filed under Section 319 Cr.P.C. by the

prosecution, the findings of the learned Additional Sessions Judge, Amritsar were as under:

“Charges in the case were framed on 14.11.2012 but during the trial Balwant Singh died and proceedings against him were dropped vide order dated 10.03.2014 and the prosecution evidence was led. The complainant appeared as PW1 and stated that accused Balwant Singh told him that he alongwith his family members was running a travel agency and he and his family members may also send his son Yadwinder Singh to Australia on study basis. It is also alleged by PW1 that the accused asked him to pay Rs.8,50,000/- for sending his son Yadwinder Singh on study basis. During the month of November, 2010 the accused Balwant Singh, his wife Parkash Kaur, Sahib Singh @ Sabhi and LabhSingh came in a case in the house of the complainant and on demand of complainant paid Rs. 6,00,000/- to the above said accused in the presence of Makhan Masih and Narinder jSingh. Even if the statement of complainant is taken on its face value there are no allegations of any inducement by the proposed accused. The respondents were even not present when accused Balwant Singh told the complainant about the running of travel agency by his family. No specific role has been attributed to the respondents/proposed accused and the money was also not handed over

specifically to the proposed accused. The offence was registered under Sections 420/506 IPC only.”

8. Learned counsel for the petitioner failed to demonstrate any perversity or error of law committed by learned trial Court or learned Additional Sessions Judge arising out of misreading/misappreciation of evidence/material available on record. For summoning a person as an additional accused the requirement is more than prima facie case but less than leading to prospects of conviction. No specific role or allegation of inducement before or at the time of acceptance of money by accused-Balwant Singh from the complainant was attributed to the persons proposed to be summoned as an additional accused. It appears that just to wrap in the entire family their names were mentioned in the complaint.

9. Thus, the petition being devoid of merit fails and is hereby dismissed.

March 04, 2015
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(SNEH PRASHAR)
JUDGE