

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

**Crl. Revision No. 2359 of 2014 (O&M)
Date of decision : 01.05.2015**

Vinod Kumar

.....Petitioner(s)

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MS. JUSTICE ANITA CHAUDHRY

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

ANITA CHAUDHRY, J(ORAL)

CRM-23488-2014

For the reasons set out in the application, same is allowed and delay of 6 days in filing the present petition is condoned.

CRR-2359-2014

This revision is directed against order dated 25.04.2014, passed by the Addl. Sessions Judge, Ludhiana on the application moved by the accused under Section 319 Cr.P.C. The trial Court dismissed the application and refused to summon the persons named by the petitioner. Aggrieved by the same, this revision has been preferred.

Giving the factual score first; Sukhwnder Singh gave a complaint against the working of the Civil Surgeon Office, Ludhiana. A detailed inquiry was conducted by D.S.P., Vigilance and a report was submitted against the medical scam. The report was submitted to the S.S.P. and later FIR No.24 was registered on 10.08.2006, under Section 409, 467, 468, 471, 120-B and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act. Petitioner was challaned, charge-sheet was framed and after some evidence has been recorded, the accused-petitioner moved an application Annexure P-10 for summoning three Ex-Assistant Civil Surgeon as additional accused. He claimed that the charge-sheet had been filed only against him while three persons had been left out. It was pleaded that Sanjeev Kumar had made a statement in the Court and had referred to their specific role and they should be summoned as additional accused.

The trial Court dismissed the application and paragraph no.6 of the order is as under:-

"It is pertinent to mention that on perusal of the record, and taking into note the documents appended on the file, coupled with the letter written by Chief Director Vigilance Bureau Punjab Chandigarh, the Court is of the considered opinion that the application deserves to be dismissed. Rather, the moving of the application which can no doubt be moved by any individual, it rather reflects the conduct of the person who is himself facing the trial, wants to drag the other people in the trial for the reasons best known to him.

Whereas, the documents of the prosecution case rather shows as to thorough inquiry having been conducted at length that too by the officials of Vigilance Bureau and the allegations have been found only against Vinod Kumar the accused."

At the preliminary hearing, the counsel for the petitioner referred to the statement made by Sanjeev Kumar, Junior Assistant (PW-1) and urged that the witness had identified the signatures of Dr. Prabhjit Singh Brar, Dr. Charanjit Singh and Dr. Manorma Avasthi, but still they were not summoned and there was evidence against them and when evidence appears during the course of the inquiry or trial, an additional accused can be summoned by the Court under Section 319 Cr.P.C.

I have considered the submissions and have gone through the statement of Sanjeev Kumar PW-1.

The allegations made in the complaint against the petitioner were that during the period 1999-2005, he had shown a higher supply of medicines and utensils to different health centres but actually lest items had been sent and in some cases no items had been sent. In order to escape detection, the petitioner is alleged to have forged documents with the help of the inspecting officer of the store. When the matter was examined by the S.S.P., it was found that it was petitioner alone who was responsible for it and challan was submitted.

The complainant moved an application under Section 173 Cr.P.C.(8) Cr.P.C. for submitting a supplementary report and

take action against some other persons. Ultimately, no supplementary challan was filed.

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

Section 319 in The Code Of Criminal Procedure, 1973

319. 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 the 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.

An additional accused can be summoned if there appears evidence which reveals that there are some other accused who are involved and who should be tried along with the accused. Section 319 Cr.P.C. allows the Court to proceed against and person who is not an accused in the case before it.

The counsel for the petitioner has referred to the statement of Sanjeev Kumar PW-1. In the opening lines of the statement, the witness had identified the signatures of Dr. Prabhjit Singh Brar, Dr. Charanjit Singh and Dr. Manorma Avasthi

on the stock register and had deposed the role played by the accused. The statement refers to different vouchers wherein the accused had shown the number of items existing and the articles being dispatched whereas those items had not been sent. The witness had deposed, it was the petitioner who forged the record regarding the vouchers and stock register. No evidence had been produced which speaks about the involvement of any other person. On a plain reading of Section 319 Cr.P.C., there has to be some evidence which is tendered during the inquiry or trial that some other person had also committed the offence for which he should be tried. The trial Court had given a finding that no prima facie case was made out for summoning additional accused and there is no reason to hold otherwise. The degree of satisfaction that is required in summoning a person under Section 319 Cr.P.C. has to be different. I see no infirmity in the order.

The revision petition is dismissed in limine.

01.05.2015
sunil

(ANITA CHAUDHRY)
JUDGE