

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

**CRR No. 3868 of 2014  
Date of decision:- May 26, 2015**

**Kulbir Kaur**

**...Petitioner...**

**versus**

**State of Punjab and another**

**...Respondents...**

**CORAM : HON'BLE MR. JUSTICE JASPAL SINGH**

Present : Mr. P.S. Ahluwalia, Advocate,  
for the petitioner.

Mr. R.P.S. Sidhu, AAG, Punjab.

Mr. Ashok Goel, Advocate,  
for respondent No.2.

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**JASPAL SINGH, J.**

Through this revision petition preferred under Section 401 read with Section 482 of the Code of Criminal Procedure (for brevity, 'Code'), petitioner has sought quashing/setting aside of order dated September 11, 2014 (Annexure P-1) passed by Id. Chief Judicial Magistrate, Patiala by virtue of which petitioner has been summoned to face trial under Section 319 of the Code to stand trial along with co-accused in case FIR No. 338, dated July 27, 2009, under Sections 406 and 420 IPC, registered at Police Station Kotwali Patiala, District Patiala (Annexure P-2).

2. In response to the notice of motion issued to the

respondents, Mr. RPS Sidhu, Assistant Advocate General, Punjab appeared on behalf of respondent No.1-State whereas Mr. Ashok Goel, Advocate represented respondent No.2.

3. While assailing impugned order dated September 11, 2014 (Annexure P-1), it has been ebulliently argued by learned counsel for the petitioner that a bare perusal of complaint and summoning order transpires that a crude attempt has been made by respondent No.2-complainant to falsely implicate the petitioner. In fact, a perusal of FIR reveals that a general, vague and omnibus allegations have been levelled against petitioner, who is none else but the wife of co-accused-Daljeet Singh @ Prince . There is nothing on the record to suggest, even in the FIR that she was working with her husband-Daljeet Singh @ Prince at the time of alleged receipt of money for sending Mandeep Singh abroad or at any subsequent stage. Even, a compromise has also been arrived at between the parties and cheque was also issued by Daljeet Singh @ Prince and not by petitioner, regarding which a separate complaint has also been filed by complainant-Jagir Singh against Daljeet Singh @ Prince. It has simply been mentioned that though FIR has been registered under Sections 406 and 420 IPC against petitioner, her husband-Daljeet Singh @ Prince and one Karanveer Singh @ Jimmy but during investigation of this case, petitioner was found innocent and at the time of presentation of report under Section 173 (2 ) of the Code, she was placed in column No.2. Meaning thereby, that there was no cogent, convincing and *prima facie* evidence against her and allegations levelled by complainant were found to be false. On the

basis of same evidence, she has been summoned to face trial, which is absolutely impermissible. Accordingly, impugned order is liable to be set aside/quashed by way of acceptance of instant revision petition.

4. On the other hand, learned counsel for respondents have strongly opposed the submission made by learned counsel for petitioner and have stressed that since there are specific allegations against petitioner that she along with her husband-Daljeet Singh @ Prince and one Karanveer Singh @ Jimmy were engaged in sending various persons abroad and during that period they also allured complainant-Jagir Singh for sending his son-Mandeep Singh abroad and ultimately, they succeeded in obtaining initially a sum of ₹5 lacs and then a sum of ₹10 lacs but neither Mandeep Singh was sent nor amount was returned. Though a settlement has been arrived at between petitioner, her husband-Daljit Singh and Karanveer Singh @ Jimmy with complainant and a cheque was issued in pursuance thereto but that was also dishonored on presentation in the bank regarding which complainant-Jagir Singh had to file a separate complaint under Section 138 of the Negotiable Instruments Act, 1881. Since, there is no infirmity or illegality in the impugned order and appeal is sans merit, the same deserve to be dismissed.

5. This Court has given an anxious thought to the aforesaid submissions made by learned counsel for the parties and have also perused the record available.

6. By now, it is pretty settled that while dealing with an application under Section 319 Cr.P.C, court should not summon a

person as an additional accused and pass an order mechanically merely on the ground that some evidence had come on record showing implication of a person and further that power envisaged under Section 319 Cr.P.C. is to be used sparingly only if there is convincing evidence against the person(s) sought to be summoned as an additional accused. To fortify this view, we can have reference of the pronouncement of Hon'ble Apex Court captioned as **Krishnappa vs. State of Karnataka; 2004 (4) RCR 679** as well as that of our own High Court titled as **Manoj Kumar vs. Prabhu Ram; 2003 (4) RCR 887**.

7. Recently in case **Hardeep Singh vs. State of Punjab and others; 2014 (3) SCC 92**; power envisaged under Section 319 Cr.P.C. was discussed at length. The relevant paragraphs of the above-referred judgment reads as under:

*“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 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."*

8. A perusal of the afore-said paragraphs discloses that power under Section 319 Cr.P.C. is to be exercised sparingly being discretionary and extraordinary and that too, in those cases where circumstances of the case so warrant. It has further been laid down that no doubt, only a *prima facie* case is to be established by the prosecution by way of evidence led before the court and the same is not required to be tested on the anvil of cross-examination, yet, it has also been observed that it requires much stronger evidence than mere probability of the complicity of a person to be summoned as an additional accused. The test that has to be applied is one which is more *prima facie* case as exercised at the time of framing of charge but short of satisfaction to an extent that the evidence, if left un rebutted would lead to conviction. Therefore, mere statement of Jagir Singh Singh-PW-1 which can be termed to be an improved version is not sufficient to summon petitioner as an additional accused.

9. Adverting to the facts of the case in hand, it can be observed without any hesitation that allegations against petitioner -Kulbir Kaur are vague and general. There is no specific allegation against her. Even, there is nothing on record to suggest that she is involved in the transaction. Here, it would also be pertinent to mention that complainant-Jagir Singh appeared in the witness-box as PW-1 prior to the passing of summoning order but it appears that Id. trial court did not take into consideration his statement particularly cross-examination, which clinches the entire controversy, which is the subject matter of instant revision petition. It has been categorically admitted by him that his youngest son Mandeep Singh was working in City Finance Marketing Company in the year 2006 and during that period only he met Karanveer Singh @ Jimmy, son of Manjit Singh and Daljeet Singh @ Prince, son of Krishan Chand of Deep Entertainment Group at Chhoti Barandari, who are engaged in the business of sending persons abroad. They talked to his son and allured him to send to America as well as to get him a job there. The deal was finalized for ₹15 lacs. His son-Mandeep Singh asked them that he would take up the matter at subsequent stage after proposal is accepted by his family members. In a subsequent cross-examination, it has been further stated by Jagir Singh that they received a sum of ₹5 lacs besides a passport and asked to make an arrangement of balance amount of ₹10 lacs. Karanveer Singh @ Jimmy and Daljeet Singh @ Prince had also taken passport of his son as well as other important documents then in the month of October 2007, both the accused said that they have succeeded in getting the

visa of his son and further to keep ready with the balance amount of ₹10 lacs. Both the aforesaid accused came to his house on October 26, 2007 at village Partapgarh in the presence of Jasvir Singh, Bhupinder Singh, Nirbhai Singh and other family members, the balance amount of ₹10 lacs was given to both the accused. It has further emerged in the cross-examination that both these accused had instead of sending his son Mandeep Singh to America had rather sent him to California from where he was deported back to India. So, meaning thereby, there is no specific allegation against petitioner-Kulbir Kaur or that she played any role. Ld. Judicial Magistrate while passing impugned order has simply mentioned in the order that from the testimony of Jagir Singh, there is sufficient evidence against petitioner-Kulbir Kaur. Here, it would also be pertinent to mention that there is no evidence collected by the investigating agency or adduced by complainant before Id. trial court after petitioner was found innocent by the investigating agency. Thus, it can be said without any hesitation that summoning of petitioner vide impugned order dated September 11, 2014 is nothing but an abuse of the process of law and she appears to have been dragged in these proceedings just being the wife of Daljeet Singh @ Prince-co-accused.

10. As an upshot of the aforesaid discussions, this Court finds merit in the instant revision petition. As such, same is allowed and order dated September 11, 2014 passed by Id. Chief Judicial Magistrate, Patiala, is set aside.

However, it is also made clear that any observation made

by this Court shall have no binding effect or reflection qua the case of other accused, who are already facing trial.

**May 26, 2015**  
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**(JASPAL SINGH)**  
**JUDGE**