

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

CRR-3915-2014
Date of decision:10.12.2015

Vikramjit Singh and another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

1. To be referred to the Reporters or not ?
2. Whether the judgment should be reported in the Digest ?

Present: Mr.Anil Chawla, Advocate for the petitioner.
Ms.Anmol Grewal, AAG, Punjab.

RAMESHWAR SINGH MALIK, J. (Oral)

Feeling aggrieved against the impugned order dated 8.8.2014 passed by the learned Additional Sessions Judge, allowing the application of the prosecution under Section 319 of the Code of Criminal Procedure ('Cr.P.C.' for short), whereby petitioners were summoned as additional accused to face the criminal trial, arising out of FIR No.126 dated 22.8.2012 registered under Sections 22, 61 and 85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act' for short), they have approached this Court by way of instant criminal revision petition.

Petitioners have also challenged the charge-sheet dated 5.11.2014, whereby the learned trial Court framed the charges against the petitioners, after having them summoned vide above-said order passed in the application under Section 319 Cr.P.C.

Notice of motion was issued and pursuant thereto, respondent-State filed its reply by way of affidavit dated 23.2.2015.

Learned counsel for the petitioners, by way of CRM-28561-

2015, placed on record a copy of judgment of conviction dated 7.7.2015 and also a copy of order of sentence dated 13.7.2015 passed by the learned Judge, Special Court, Amritsar as Annexure P-6.

Learned counsel for the petitioners submits that since the petitioners were employed with Jaspreet Singh @ Sherry, they were not supposed to know whether their employer was having valid licence to do business of drugs or not. They were simply working on his directions and in such a situation even the conscious possession of the petitioners would not attract the relevant provisions of NDPS Act. He further submits that there was no fresh material brought on record against the petitioners, so as to enable the learned trial Court to summon them under Section 319 Cr.P.C. as additional accused to face criminal trial, because the investigating agency had declared the petitioners innocent. While referring to para 7 of the impugned order, learned counsel for the petitioners submits that examination of some prosecution witnesses including PW-5 ASI Mann Singh would not be sufficient to summon the petitioners, because knowledge of the petitioners that their employer namely Jaspreet Singh @ Sherry was having a valid licence or not, has not been established on record. While placing reliance on the judgment of the Hon'ble Supreme Court in **Ram Singh v. Central Bureau of Narcotics, 2011 (2) RCR (Cr.) 850**, learned counsel for the petitioners prays for allowing the present petition, by setting aside the impugned order dated 8.8.2014 passed by the learned Additional Sessions Judge, Amritsar.

Impugning the charge sheet on the similar lines, learned counsel for the petitioners would submit that once the impugned summoning order dated 8.8.2014 was patently illegal order, charges could

not have been framed against the petitioners. However, since the learned trial Court has proceeded on a factually wrong and misconceived approach, while framing the charges against the petitioners, the same is liable to be set aside. He prays for setting aside the impugned charge sheet dated 5.11.2014, by allowing the instant petition.

On the other hand, learned counsel for the State submits that sufficient evidence has been brought on record to make out more than a prima facie case against the petitioners, which was sufficient to exercise the powers under Section 319 Cr.P.C. and the learned trial Court did not exceed its jurisdiction, while passing the impugned order dated 8.8.2014, summoning the petitioners as additional accused to face criminal trial. She further submits that the order passed by the learned trial Court is in consonance with the latest Constitution Bench judgment of the Hon'ble Supreme Court on the subject in **Hardeep Singh v. State of Punjab and others, 2014 (3) SCC 92**, which has again been followed in **Babubhai Bhimabhai Bokhiria and another v. State of Gujarat and others, 2014 (5) SCC 568**. She 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 contentions raised, this Court is of the considered opinion that since the impugned orders passed by the learned trial Court, as a matter of fact, have been found strictly in accordance with the law laid down by the Constitution Bench of the Hon'ble Supreme Court in **Hardeep Singh's case (supra)** and **Babubhai Bhimabhai Bokhiria 's case (supra)**, the learned trial Court has committed no error of law, while passing the impugned order under Section 319 Cr.P.C. as well as the order of framing

the charges against the petitioners. Having said that, this Court feels no hesitation to conclude that since none of the orders has been found to be suffering from any patent illegality or jurisdictional error, the same deserve to be upheld.

A bare reading of the impugned order passed by the learned trial Court under Section 319 Cr.P.C. would show that before arriving at a just conclusion, the learned trial Court satisfied itself that there was more than a prima facie case against the petitioners. The relevant observations made by the learned Additional Sessions Judge in paras 6 and 7 of the impugned order, deserve to be noticed here and the same read as under:-

“After completion of the investigation, the police report u/s. 173 Cr.P.C. was presented in the Court against accused Jaspreet Singh alias Sherry, Didar Singh alias Dari and Vikram Kumar Mehta, whereas the accused Vikramjit Singh alias Deep s/o Sukhdev Singh and William s/o Joginder Singh were shown in column no.2 of the police report as they were declared to be innocent during enquiry as described in the police report u/s. 173 Cr.P.C. After presentation of challan, the accused Jaspreet Singh alias Sherry, Didar Singh alias Dari and Vikram Kumar Mehta, were charge sheeted by the court U/s.22, 27-A of NDPS Act, 1985. While the case was fixed for prosecution evidence, PW1 SI Anoop Kumar, PW2 HC Gurmukh Singh, PW3 Sukhdeep Singh, Drugs Inspector, PW4 Sawinder Kaur, Junior Assistant, DTO Office, Amritsar, PW5 ASI Mann Singh entered the witness box. PW1 SI Anoop Kumar was also cross-examined by the defence counsel.

During the course of trial and in his evidence, ASI Mann Singh has specifically stated that on 22.8.2012 he was posted at CIA Staff, Amritsar and on that day he was present in the police party of SI Anoop Kumar, who received secret information against the accused persons that they indulged in the business of narcotic drugs. They raided the disclosed place.

He further deposed that the investigating officer apprehended three persons present today in the Court while unloading the boxes of medicines from the canter bearing No.HR-37-B-3052 and boxes were loading on Aactiva vehicle. IO checked the said boxes and found that the same were containing intoxicant injections, intoxicant capsules and tablets. PW5 ASI Mann Singh further deposed that the person who was sitting on the Aactiva vehicle disclosed his name as Vikramjit Singh alias Deep s/o Sukhdev Singh and the person who was standing near the Canter disclosed his name as William s/o Joginder Singh and the person who was standing near the Canter disclosed his name as Vikram Kumar s/o Ashwani Kumar. In the later portion of his deposition, PW5 ASI Mann Singh also testified that the investigating officer arrested Vikramjit Singh vide arrest memo Ex.PW5/4 and William vide memo Ex.PW5/5. He further testified that their personal searches were also conducted vide memos Ex.PW5/8 and Ex.PW5/7 respectively. In my considered opinion, from the police report u/s. 173 Cr.P.C. as well as the testimony of PW5 ASI Mann Singh, it appears that the presence as well as involvement in the commission of offence of Vikramjit Singh alias Deep s/o Sukhdev Singh, stated to be standing on the Aactiva on which the boxes of intoxicants were being loaded, is established. Similarly, the presence as well as involvement in the commission of offence of William s/o Joginder Singh, who was stated to be standing near the Canter, at the time of recovery of intoxicant substances, also appears to have been established, therefore, they both these are liable to be arrayed as accused in this case.”

The contentions raised by the learned counsel for the petitioners that after presentation of the police report under Section 173 (2) Cr.P.C. no fresh material was brought on record by the prosecuting agency, has been found to be wholly misplaced and the same is only to be noted to

be rejected.

A bare reading of the above-said observations made by the learned trial Court would show that as many as five prosecution witnesses were examined by the prosecution. PW-5 ASI Mann Singh was found very categorical in his statement to specify the definite role played by the petitioners, while participating in the commission of offence, therefore, the learned trial judge was well within his jurisdiction to arrive at a judicious conclusion that there was more than a prima facie case against the petitioners, which was sufficient to exercise the powers under Section 319 Cr.P.C. In such a situation, it can be safely concluded that since the impugned order dated 8.8.2014 passed under Section 319 Cr.P.C. has not been found to be suffering from any patent illegality, the same deserves to be upheld. As a natural consequence thereof, learned trial Court has again been found justified to frame the charges against the petitioners and the charge-sheet dated 5.11.2014 also deserves to be upheld.

The controversy has been set at rest by the Hon'ble Supreme Court in its latest Constitution Bench judgment in **Hardeep Singh's** case (supra), which has been further reiterated by the Hon'ble Supreme Court in in **Babubhai B'himabhai Bokhiria's case (supra)**. The relevant observations made by the Hon'ble Supreme Court in paras 7 and 8 of its judgment in **Babubhai Bhimabhai Bokhiria'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 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."

Section 319 of the Code confers power on the trial court to find out whether a person who ought to have been added as 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.”

So far as the judgment relied upon by the learned counsel for the petitioner is concerned, there is no dispute about the law laid down therein. However, on close perusal of the cited judgment, the same has been found to be of any help to the petitioners, being distinguishable on facts. Further, it is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundra Rao and another Vs. State of Tamil Nadu and others**, 2002 (3) SCC 533.

During the course of hearing, learned counsel for the petitioners could not point out any jurisdictional error or patent illegality apparent on record in both the impugned orders passed by the learned trial Court, so as to enable this Court to exercise its revision jurisdiction, which itself is a limited one. The impugned orders passed by the learned trial Court have not been found contrary to the law laid down by the Hon'ble Supreme Court and the same deserve to be upheld, for this reason as well.

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 the instant criminal revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail.

No case for interference has been made out. However, it is made clear that

observations made hereinabove, shall not affect the case of either party, during the course of trial.

Resultantly, with the above-said observations made, the present petition stands dismissed, however, with no order as to costs.

10.12.2015
mks

(RAMESHWAR SINGH MALIK)
JUDGE