

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

**CRR No. 771 of 2015 (O&M)
Date of Decision: 15.07.2015**

Lakhbir Kaur @ Jyoti

.....Petitioner

Vs.

State of Punjab and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Navkiran Singh, Advocate
for the petitioners.

Mr. Daljit Singh Virk, AAG, Punjab.

Mr. Kanwaljit Singh, Sr. Advocate with
Mr. Amandeep Singh Meho, Advocate
for respondent No.2.

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

RAMESHWAR SINGH MALIK J.

Present criminal revision petition is directed against the order dated 6.1.2015 passed by the learned Additional Sessions Judge (Fast track), Jalandhar, whereby petitioner was summoned as an additional accused to face the trial in FIR No. 258 dated 20.11.2013 under Sections 307/115/120-B/34 of the Indian Penal Code ('IPC' for short) and Sections 25/54/59 of the Arms Act, 1959, registered at Police Station Division No. 7, Jalandhar, allowing an

application filed under Section 319 of the Code of Criminal Procedure ('Cr.P.C.' for short).

Notice of motion was issued and proceedings qua the petitioner before the learned trial court were stayed by this Court, vide order dated 4.3.2015.

Learned counsel for the petitioner submits that learned trial Judge has misdirected himself, while passing the impugned order. There was no evidence, much less sufficient evidence, so as to connect the present petitioner with the offences alleged in the FIR, which was registered against unknown persons. He further submits that since the petitioner was not named in the FIR, there was no scope of levelling any allegation against her. Even during the course of investigation, no incriminating material came to the notice of the investigating agency against the petitioner, as is clear from police report under Section 173 Cr.P.C. (Annexure P-6). Vikramjit Singh @ Vikramveer Singh-brother of Karanveer Singh-complainant, was married with the petitioner-Lakhbir Kaur @ Jyoti. Some disputes, including the matrimonial dispute, were going on between husband and wife, because of which the petitioner has been sought to be falsely implicated in the present case, as an additional accused with the aid of Section 319 Cr.P.C. This was the strong reason and motive with the complainant to falsely implicate the petitioner.

He would next contend that as per statement made before the Court as PW1, complainant-Karanveer Singh tried to make drastic changes and improvements in the prosecution story, with a view to make a case for summoning the petitioner under Section 319

Cr.P.C. Complainant took a complete somersault, while trying to make material improvements in his earlier statements, made before the police at the time of registration of the FIR and during investigation. He submits that an alleged E-mail, with the help of which the petitioner has been sought to be implicated in the present case, was nothing more than a waste paper. Relying upon the Constitution Bench judgment of the Hon'ble Supreme Court in Hardeep Singh Vs. State of Punjab and others, 2014 (3) SCC 92, learned counsel for the petitioner submits that learned trial court has failed to appreciate the true import of the judgment of the Hon'ble Supreme Court, while passing the patently illegal order. He prays for setting aside the impugned order, by allowing the present petition.

Per contra, learned counsel for the State submits that the impugned order was not suffering from any patent illegality. He further submits that the impugned order was not contrary to the law laid down by the Hon'ble Supreme Court in Hardeep Singh's case (supra) and the petitioner was rightly summoned as an additional accused to face the criminal trial, while passing the impugned order, which deserves to be upheld. He concluded by submitting that there was sufficient evidence against the accused for summoning her under Section 319 Cr.P.C., as has rightly been done by the learned trial court. He prays for dismissal of the present petition.

Similarly, while endorsing the arguments raised by learned counsel for the State, learned senior counsel for respondent No.2 vehemently contended that involvement of the petitioner in the commission of crime was very much established. He further submits

that all the relevant incriminating material had been collected against the petitioner, which was more than sufficient to summon her as an additional accused. He would next contend that, in such a situation, learned trial court committed no error of law, while passing the impugned order and the same deserves to be upheld. He also prays for dismissal of the present petition.

Having heard 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 keeping in view the peculiar facts and circumstances of the case, instant one has been found to be a fit case warranting interference at the hands of this Court, while exercising its revisional jurisdiction. To say so, reasons are more than one, which are being recorded hereinafter.

A combined reading of the FIR (Annexure P-1), statements of Karanveer Singh-complainant (Annexure P-2), his father namely Harminder Singh (Annexure P-3), his business partner-Maninder Singh (Annexure P-4), his brother Vikramjit Singh (Annexure P-5), (all the statements were recorded by the police under Sections 161 Cr.P.C.), charge sheet dated 18.3.2014 (Annexure P-7) against six persons namely Parshotam Kumar @ Lali, Pawan Kumar @ Pawan, Kulwinder Singh @ Kaka, Mangat Singh, Harmandeep Singh and Sandeep Singh and application moved by the prosecution under Section 319 Cr.P.C. (Annexure P-9), would make it crystal clear that complainant, at the instance of his brother Vikramjeet @ Vikramveer Singh, resident of Norway, and other family members, has tried to

falsely implicate the petitioner, because of malafide intention, with a view to wreak vengeance. The complainant and his family members got a strong motive to do so because petitioner is the estranged wife of the brother of complainant, as matrimonial dispute was already going on between them.

A bare perusal of the statements suffered by the complainant, first one given before the police and second before the learned court, leaves no manner of doubt that complainant has tried to improve upon his case to such an extent that it seems to be absurd on the face of it and does not appeal to reason at all. Since the learned trial court has failed to delve deep into this crucial aspect of the matter, the impugned order has resulted in a serious miscarriage of justice and the same cannot be sustained.

Since the parties were closely related with each other, this Court made more than one efforts to get the matter amicably settled qua the present petitioner. Even, petitioner side was ready for an amicable settlement on any reasonable terms and conditions but the complainant and his father remained adamant not to enter into a dialogue in this regard. Simultaneously, complainant side could not give any reason, much less plausible reason, as to why they wanted to maintain this bad blood amongst close relatives, for all times to come. However, once the parties could not reach at an amicable settlement, this Court was called upon to proceed further and decide the case on merits.

During the course of hearing, when a pointed question was put to the learned counsel for the State, as to how he would justify

and reconcile the diametrical and contradictory stands taken by the complainant before the police and court, he had no answer and rightly so, it being a matter of record. However, one thing has become clear that complainant has taken self contradictory stands, because of his malafide intentions and having been instigated to do so by his brother and other family members, so as to settle score with the petitioner. Having said that, this Court feels no hesitation to conclude that learned trial judge fell into serious error of law, while passing the impugned summoning order and the same cannot be sustained, for this reason also.

So far as allegation of conspiracy levelled against the petitioner was concerned, there was not even the remotest scope of being any truth in it. Reason to say so is that the petitioner was staying in Norway and the complainant did not even remotely suggest that there was any scope of prior meeting of minds of the petitioner and Parshotam, who is an accused in the FIR right from day one. In fact, entire case of the prosecution, qua the petitioner, is based on alleged confession of Parshotam before the police. A confessional statement made by an accused before the police is inadmissible in evidence, in view of the provisions contained in Section 25 of the Indian Evidence Act, 1872. Under these circumstances, very participation by accused Parshotam Kumar in the commission of offence, in the present case, will be a debatable issue. However, this Court refrains itself from making any further comment in this regard, at this stage, lest it should prejudice the rights of either of the parties.

When statements of the complainant made before the police and before the court, at page 26 and 48 of the paper book respectively, are compared and analysed, it becomes unambiguous like a clear sky that complainant has failed to show even prima facie involvement of the petitioner in the commission of offence. Thus, a close perusal of the record available on the case file would show that complainant has made a malafide attempt to falsely implicate the petitioner. Since the learned trial court failed to appreciate true factual as well as legal position obtaining in the present case, the impugned order is not sustainable in law.

The learned trial court has also failed to appreciate the fact that even if the petitioner sent some documents through E-mail, and that too, much after the occurrence, that itself will not even remotely connect the petitioner with the offence in question. It is also pertinent to note here that Parshotram Kumar was already known to both the families, i.e. family of the petitioner and that of the complainant. Further, as noticed above, once involvement of Parshotam Kumar himself was not beyond a reasonable shadow of doubt, sending any document by the petitioner through an E-mail would lose its significance.

In any case, if at all, the only allegation against the petitioner could have been that she tried to help the accused to escape from the process of law. Even this equally important aspect of the matter has also not been either examined, considered or appreciated by the learned trial court, while passing the impugned order. In this view of the matter, the impugned order is patently illegal

and cannot be sustained.

Coming to the scope of Section 319 Cr.P.C., the issue is no more res integra. However, learned trial court has misdirected itself, while altogether ignoring the true import of provisions of Section 319 Cr.P.C. and also the law laid down by the Hon'ble Supreme Court in its Constitution Bench judgment in Hardeep Singh's case (supra). In the present case, except the totally changed version of the complainant, there was no other evidence available on record which might have been said to be sufficient enabling the learned trial court to exercise its powers under Sections 319 Cr.P.C. In fact, the law laid down in Hardeep Singh's case (supra) has been completely misunderstood by the learned trial court, while passing the impugned order and the same is liable to be set aside, for this reason also.

The Hon'ble Supreme Court, in para 49 to 53 of its judgment in Hardeep Singh's case (supra), after a detailed discussion on the issue and referring to all the earlier important judgments on Section 319 Cr.P.C., with a particular reference to its earlier Constitution Bench Judgment in Dharampal Vs. State of Haryana, observed 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 319 Cr.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 193 Cr.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.”

The conclusions arrived at, while laying down the law on the true import of Section 319 Cr.P.C. in para 98 and 99 of its judgment in Hardeep Singh's case (supra), came to be reiterated by the Hon'ble Supreme Court in its recent judgment in Babubhai Bhimabhai Bokhiria and another Vs. State of Gujarat and others, 2014 (5) SCC 568. To avoid repetition and for the sake of brevity, the relevant observations made by the Hon'ble Supreme Court in para 1, 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 consider the case, we must remind ourselves the maxim *“judex damnatur cum nocens absolvitur”* which means that a Judge is condemned when guilty person escapes punishment. But, at the same time, we cannot forget that credibility of the justice delivery system comes under severe strain when a person is put on trial only for acquittal.

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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) SCALE 241**. 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 unrebutted, 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.”

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 learned trial court failed to follow the law laid down by the Hon'ble Supreme Court, the impugned order cannot be sustained.

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 the impugned order dated 6.1.2015 passed by learned Additional Sessions Judge, (Fast Track) Jalandhar, has been found to be suffering from patent illegality and also contrary to the law laid down by the Hon'ble Supreme Court in the cases referred to herein-above, the same cannot be sustained in law. Consequently, the impugned order dated 6.1.2015 passed by learned Additional Sessions Judge, (Fast Track) Jalandhar, is hereby set aside.

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

(RAMESHWAR SINGH MALIK)
JUDGE

15.7.2015
Ak Sharma