

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

CRM-M-10973 of 2016 (O&M).
Decided on:-26.07.2016.

Navneet Singh.

.....Petitioner.

Versus

Joginder Singh and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Rahul Vats, Advocate for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed this petition seeking quashing of order dated 25.3.2014 passed by learned Judicial Magistrate 1st Class, Kurukshetra whereby the application under Section 319 Cr.PC filed by the petitioner-complainant for summoning of respondents No.2 to 4 as additional accused has been dismissed.

Challenge has also been laid to order dated 19.11.2015 passed by learned Additional Sessions Judge, Kurukshetra vide which the revision filed by the petitioner-complainant against the aforesaid order dated 25.3.2014 was dismissed.

Briefly stated, on the complaint of petitioner Navneet Singh, FIR No.24 dated 18.2.2012 under Section 420 IPC was registered at Police Station Kurukshetra University, Kurukshetra against respondent No.1 Joginder Singh.

During the trial in the case, the petitioner had moved an application under Section 319 Cr.PC seeking summoning of Vidya Devi wife

of Sher Singh, Krishna Devi alias Kali wife of Joginder Singh and Sher Singh son of Guddar Ram, father of accused Joginder Singh for facing trial in the pending case. In the application, it has been stated that on 1.5.2013, the prosecution examined petitioner-complainant Navneet Singh and Rakesh and in the statements of these prosecution witnesses, it has come on file that Vidya Devi, Krishna Devi alias Kali and Sher Singh (respondents No.2 to 4 herein) have also taken active part in the commission of offence, but the police did not challan them though the names of these persons have duly been mentioned in the complaint. Therefore, there is sufficient evidence on record to summon these accused.

The respondent-accused filed reply to the said application questioning the very locus to file and maintain the application. It was submitted that PW Rakesh Kumar has stated in his deposition that the accused named in the application have not taken part in the crime as alleged. In this manner, the complainant has filed a false complaint and the concerned officer after conducting the investigation has submitted the Challan against the accused. The collusion of the police with the accused has been denied. It has been pleaded that there is no material to summon the innocent people to face trial and, therefore, dismissal of the application under Section 319 Cr.PC was prayed.

Learned Magistrate vide order dated 25.3.2014 has dismissed the said application and did not find any justification to summon the named persons i.e. Vidya Devi, Krishna Devi alias Kali and Sher Singh as

additional accused. Learned Magistrate has taken into consideration the investigation report filed under Section 173 Cr.PC against accused Joginder Singh for commission of offence under Section 420 IPC. As per the said report, no other person was found involved in the alleged commission of crime.

Learned Magistrate has also observed that the petitioner had made a complaint to the Superintendent of Police, Kurukshetra alleging therein that respondent-accused Joginder Singh son of Sher Singh, Vidya Devi wife of Sher Singh, Kali wife of Joginder Singh and Sher Singh son of unknown grabbed a sum of Rs.7.5 lacs on allurement to buy a plot from him. But interestingly, the petitioner-complainant has not specifically mentioned date and time in his complaint about making payment of said amount of Rs.7.5 lacs. During investigation, disclosure statement of accused Joginder Singh was recorded who has stated about the receipt of money from the petitioner-complainant. When the amount of Rs.7.5 lacs was paid to accused Joginder Singh by the petitioner-complainant, then role of other family members of accused Joginder Singh in the alleged commission of crime does not arise. Accused Joginder Singh was arrested by the police and his police remand was also granted by the Court. He remained in judicial custody also. While dismissing the application, it has also been observed by learned Magistrate that in order to summon the persons on an application under Section 319 Cr.PC as additional accused, some evidence should have come on record to indicate the complicity of said persons, who are sought to

be summoned and mere statement of the complainant ipso facto cannot form the basis of summoning the persons under Section 319 Cr.PC.

Aggrieved against the said order, the petitioner-complainant preferred a revision petition, but the same was also dismissed by learned Additional Sessions Judge, Kurukshetra vide order dated 19.11.2015.

It is in these circumstances, the present petition has been preferred by the petitioner-complainant.

Learned counsel for the petitioner-complainant has argued that names of the additional accused sought to be summoned have duly been mentioned in the complaint on the basis of which the FIR in question was registered. Section 319 Cr.PC provides ample powers to the Court to summon the additional accused. The presence of respondents No.2 to 4 at the time of receipt of amount of Rs.7.5. lacs by respondent No.1 has not been disputed. The petitioner has named the respondents No.2 to 4 as accused not only in the complaint, but in his examination before the trial Court as well. Therefore, respondents No.2 to 4 are required to be summoned to face trial along with respondent No.1.

I have heard learned counsel for the petitioner.

No doubt, Section 319 Cr.PC provides that 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. In

the case in hand, charge was framed against respondent No.1-accused Joginder Singh on 18.12.2012 under Section 420 IPC. The trial has commenced and two witnesses have been examined on behalf of the prosecution. It was on 27.8.2013, an application under Section 319 Cr.PC for summoning of respondents No.2 to 4 as additional accused had been moved by the petitioner-complainant. No person on an application under Section 319 Cr.PC can be summoned as an additional accused merely on the basis of statement of the complainant recorded in the Court. In order to summon an accused, some “fresh evidence” must have come on record so as to impel the Court to summon such person as an additional accused. Even if it is accepted that the respondents No.2 to 4, who are sought to be summoned as additional accused, have accompanied accused Joginder Singh when the money as alleged was paid by the petitioner-complainant, is not sufficient to issue summoning against them.

In view of the above, this Court does not find any illegality or perversity in the impugned orders passed by the Courts below. Accordingly, affirming the same, the present, being devoid of any merit, is dismissed.

July 26, 2016

Yag Dutt

**(HARI PAL VERMA)
JUDGE**

Whether speaking/reasoned:

Yes / No

Whether Reportable:

Yes / No