
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.254

CRM No.M-19318 of 2015
DECIDED ON: February 01, 2016

AMRIK SINGH AND OTHERS

..PETITIONERS

VERSUS

STATE OF PUNJAB

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest? YES

Present: Mr. P.S. Dhanora, Advocate, for the petitioners.

Mr. A.S. Sidhu, Assistant Advocate General, Punjab.

Mr. Harsh Neyol, Advocate, for the complainant.

JASPAL SINGH, J

By virtue of the instant petition preferred by petitioners under Section 482 Cr.P.C. has sought setting aside the order dated June 03, 2014 (Annexure P-1) passed by learned Chief Judicial Magistrate, Fatehgarh Sahib, whereby an application under Section 319 Cr.P.C. moved by the prosecution for summoning the petitioner was allowed as well as the order dated March 12, 2015 (Annexure P-3) passed by learned Additional Sessions Judge, Fatehgarh Sahib, vide which the revision petition filed by

the petitioners against the order dated June 03, 2014 has been dismissed.

Briefly stated the instant case stands registered on the basis of the complaint dated June 27, 2011 preferred by Kuldip Singh son of Rattan Singh, resident of Mandofal, Tehsil and District Fatehgrah Sahib, made to Senior Superintendent of Police, Fatehgarh Sahib, wherein he has unfolded that he intended to purchase some agricultural land. On May 04, 2011, Rajinder Singh s/o Gurcharan Singh accompanied by Garja Singh came to his house along with Pardeep Singh, Advocate and disclosed about 3 acres 16 marlas of land situated in Village Raipur Gujran. Even they took him to the spot where Hoshier Singh owner of the land was also called who also disclosed that he is owner and in possession of the land. Besides, he had also shown the copy of the jamabandi in respect of land measuring 62 kanals 2 marlas. On this, the complainant agreed to purchase the said land and the matter was settled @ Rs.32 lacs per acre. Agreement dated May 04, 2011 was also put into black and white. In this regard, all the referred persons gave assurance at the time to the complainant and Pardeep Kumar, Advocate to get the sale deed executed directly from Hoshier Singh original owner. On May 10, 2011, the complainant withdraw a sum of Rs.5 lacs from his bank account for the purchase of stamp papers, which he handed over to Hoshier Singh owner of the land and Rajinder Singh. When the complainant and his father Rattan Singh went to withdraw the remaining amount from the bank, a telephonic call was received from the Rajinder Singh to pay the balance amount of Rs.90,36,000/-, which was paid by him to all the four dealers and owner Hoshier Singh in the presence of witnesses Pardeep Kumar, Ranjodh Singh and Varinder Singh. However, when the

complainant visited Tehsil Office Bassi Pathana, it came to light that aforesaid dealers and Hoshiar Singh had got prepared the sale deed on the collector rate, but the complainant had already paid Rs.5 lacs for the purchase of stamp papers. Then he talked to the dealers, but he was compelled to get the sale deed executed on the said collector rate while showing the price of the land at a collector rate. Thereafter, the complainant demanded back the excess amount of the purchase of stamp papers from the aforesaid Rajinder Singh etc., who assured to return the same within one or two days, but did not return. Thereafter, Hoshiar Singh repaid a sum of Rs.1,50,000/- to the complainant and assured that remaining amount be got returned from Rajinder Singh etc. After some time, the complainant came to know from Rajvir Singh Grewal, Advocate that fraud had taken place with him because court cases are still pending regarding the land in question in the Courts including ADC (D) Fatehgarh Sahib, Director Panchayat Punjab, Chandigarh.

On the basis of the statement unfolded by the complainant, instant FIR was registered and the investigation was put into motion. During investigation of the case, the challan was also presented against Hoshiar Singh, whereas the petitioners were kept in column No.2 of the report. However, Hoshiar Singh was charge-sheeted under Section 420 IPC to which he did not plead guilty and accordingly prosecution was asked to substantiate the charge by adducing evidence. After the examination of Kuldeep Singh as PW-1, PW2 Pardeep Kumar, PW3 Jai Bhagwan, PW4 Rattan Singh, the prosecution preferred an application under Section 319 Cr.P.C. for summoning Rajinder Singh, Garja Singh, Amrik Singh and

Gurdeep Singh as an additional accused, that application was allowed by learned trial court vide order dated June 03, 2014.

A revision petition preferred by Rajinder Singh etc. against the aforesaid order dated June 03, 2014 was dismissed by learned Additional Sessions Judge vide order dated March 12, 2015. Still aggrieved against the order dated June 03, 2014 passed by the trial court, instant petition preferred by the petitioners.

The contention of the learned counsel for the petitioners is that after registration, the matter was thoroughly investigated by S.I./SHO of the concerned Police Station as well as by Deputy Superintendent of Police, during which, the petitioners were found innocent and they have been exonerated. Report under Section 173 Cr.P.C. was only presented against Hoshiar Singh to face trial under Section 420 IPC. The lower court as well as the revisional court have failed to consider that the petitioners have been found innocent by the investigating agency and there is no evidence except the aforementioned statements of Kuldip Singh as PW-1, PW2 Pardeep Kumar, PW3 Jai Bhagwan, PW4 Rattan Singh. The statements of aforesaid witnesses were also recorded during investigation of this case, by Investigating Officer and were duly considered and finding the same to be unworthy of credence, the same were disbelieved and the petitioners were exonerated by the SHO as well as DSP. On the basis of the same evidence, learned Magistrate has summoned the petitioners to face trial under Section 420 IPC. In fact, there is no evidence what to talk of any sufficient evidence to summon the petitioners as an additional accused. It is also well settled that power envisaged under Section 319 Cr.P.C. has to be used very

sparingly and a person can be summoned only on the basis of the strong evidence which could lead to the conviction and not on the basis of any doubt or suspicion.

In the case in hand, there is no cogent or convincing evidence to establish even prima facie that the petitioners connived with Hoshiar Singh-co-accused and committed cheating or fraud with the complainant. Thus, the impugned order(s) are not sustained the eyes of law and are liable to be set aside.

This Court has given deep thought to the aforesaid submissions made by the learned counsel for the petitioners, but is not agreed with the same.

The basic requirement for invoking under Section 319 Cr.P.C. is that it should appear to the Court from the evidence collected during trial or in the inquiry that some other person who is not arraigned as an accused in that case has committed an offence for which that person could be tried together with the accused already arraigned. Whereas it is not enough that the Court entertain some doubt from the evidence, about the involvement of another person in the offence. In other words, the Court must have reasonable satisfaction from the evidence already collected regarding two aspects. Firstly, that other person has committed the offence and Secondly, that for such offence that other person as well be tried along with already arraigned accused.

Adverting to the facts of the case in hand, there are serious and specific allegations against the petitioners. Undoubtedly, the complainant intended to purchase some agricultural land and for that purpose Rajinder

Singh petitioner approached him at his house accompanied by Garja Singh along with Pardeep Kumar, Advocate. At that time, they disclosed that Hoshiar Singh wanted to sell his 3 acres and 50 marlas of land. Then they took him to the land which was to be sold by Hoshiar Singh. At that time Hoshiar Singh is also present there and showed the jamabandi reflecting his ownership and possession over the land measuring 62 kanals 2 marlas. Subsequent, thereto they assembled in the office of Pardeep Kumar, Advocate where the matter was settled @ Rs.32 lacs per acre. The agreement to sell dated May 04, 2011 was also produced into writing, which was signed by Amrik Singh, Rajinder Singh, Pardeep Kumar, Gurdeep Singh and one Jaspal Singh, besides, the proposed vendor i.e. complainant Kuldeep Singh. A sum of Rs.1 lac was also paid by the complainant as an earnest money. But subsequently it came to the light that different civil suits are pending in respect of the land in question. The factum of which was never disclosed either by Hoshiar Singh or by the petitioners who have been summoned to face trial under Section 420 IPC by the impugned order (s). Even a sum of Rs.5 lacs was also paid by the Kuldeep Singh complainant after withdrawing the same from his bank account for the purchase of stamp papers, but Hoshiar Singh only purchased the stamp papers for executing sale deed for the valuation of the agricultural land on the basis of the collector rate prevalent. At that time, they did not return the balance amount despite assurance. The active participation of the petitioners Rajinder Singh etc. is prima facie established in the case in hand. Thus, it can be said that there is sufficient evidence available on file to establish that the petitioners connived with Hoshiar Singh are co-accused to play cheating

and defraud with the complainant. Thus, impugned order(s) do not call for any interference of this Court.

In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such, the same stands dismissed.

February 01, 2016

Ankur

**(JASPAL SINGH)
JUDGE**