IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision :06.12.2016

(1) CRR No. 1705 of 2013

R.C. Verma

....Petitioner

V/s

State of Haryana

....Respondent

(2) CRR No. 1836 of 2013

Ram Kumar Gupta

....Petitioner

V/s

State of Haryana

....Respondent

(3) CRR No. 1837 of 2013

P. Balakrishnan

....Petitioner

V/s

State of Haryana

....Respondent

(4) CRR No. 1756 of 2013

Naripjit Singh

....Petitioner

V/s

State of Haryana

....Respondent

(5) CRM M-17875 of 2013

Dinesh Yadav

....Petitioner

V/s

State of Haryana & anr.

....Respondents

(6) CRM M-8606 of 2014

State of Haryana

....Petitioner

V/s

Inderjeet Singh

....Respondent

(7) CRM M-5878 of 2016

Inderjeet

....Petitioner

V/s

State of Haryana & ors.

....Respondents

(8) CRM M-17874 of 2013

Mona A. Sreenivas

....Petitioner

V/s

State of Haryana & anr.

....Respondents

(9) CRR No. 18017 of 2014

Inderjeet

....Petitioner

V/s

State of Haryana

....Respondent

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. Gautam Dutt, Advocate for the petitioner
(in CRR No. 1705 of 2013).
Mr. Madan Gupta, Advocate with
Mr. Aayush Gupta, Advocate for the petitioner(s)
(in CRR No. 1836 & 1837of 2013).
Mr. S.K. Monga, Advocate for the petitioner
in CRM M-5878 of 2016 & CRM M-18017 of 2014 &

applicant in CRR No. 1836 & 1837 of 2013 & respondent no. 2 in CRM M-17875 & 17874 of 2013)
Mr. APS Deol, Sr. Advocate with
Mr. Vishal Rattan Lamba, Advocate for the petitioner
(in CRR No. 1756 of 2013).
Mr. R.S. Cheema, Sr. Advocate with
Mr. K.S. Nalwa, Advocate for the petitioner
(in CRM M-17875 & 17874 of 2013)

Mr. Gaurav Dhir, DAG Haryana for the petitioner
(in CRM M-8606 of 2014).

Mr. Rupinder Khosla, Sr. Advocate with
Mr. Ravi Kamal Gupta, Advocate as amicus curiae.

RAJAN GUPTA J.

This order will dispose of *CRR No. 1837 of 2013, CRR No. 1756 of 2013, CRR No. 1836 of 2013, CRR No. 1705 of 2013, CRM M-17875 of 2013, CRM M-17874 of 2013, CRM M-8606 of 2014, CRM M-5878 of 2016 & CRM M-18017 of 2014.*

Facts are being taken from *CRR No. 1705 of 2013.* This revision petition is directed against order passed by Sessions Judge, Kaithal whereby he exercised his power under section 319 Cr.P.C. and summoned petitioner(s) as additional accused and directed further investigation against some other officers.

Brief factual background of the case is that Additional Deputy Commissioner, Kaithal wrote a letter to Superintendent of Police, Kaithal seeking registration of FIR. It was stated that an employee of District Rural Development Authority, Kaithal (DRDA) Inderjeet Singh was posted as Accountant under the Total Sanitation Campaign Scheme from 24.10.2008 to 26.04.2012. Said employee also worked as Clerk/Accountant in the office of Zila Parishad, Kaithal since 17.03.1998 and had dealt with various government schemes. Due to certain dereliction of duty, he was placed on suspension by Deputy Commissioner, Kaithal vide order dated 26.04.2012.

During the period of suspension, Additional Deputy Commissioner, Kaithal constituted a Committee of some Accountants to verify the official record. During such inquiry it was found that the official, by committing forgery in various signed cheques, had withdrawn access amount as against the amount shown in the cash book and vouchers. This forgery/fabrication was committed with intent to misappropriate huge government funds. These were used by the official for his personal gains. The Committee also found grave irregularities in the withdrawal of government money while filling the amount in the cheques. On the basis of these allegations, FIR in question was registered under sections 409, 420, 467, 468, 471, 120-B IPC and section 13(1)(d) of the Prevention of Corruption Act, 1988 at police station Civil Lines, Kaithal. Investigation ensued. Police presented its final report under section 173 Cr.P.C. In said report reference was made to 44 cheques out of which there was interpolation in 42. Number of documents were attached with the final report. It was prayed that action be taken against main accused namely Inderjeet Singh. It appears that during investigation, police recorded statements of various persons including officials of DRDA, the bank and a chartered accountant namely Diwakar Gupta. An amount of ₹3,50,000/- was recovered from the house of Inderjeet Singh during investigation. Investigating agency claimed that on 03.05.2012, it recorded disclosure statement of Inderjeet Singh who disclosed his total assets as ₹1,31,10,000/-. Thus, offence under section 13(1) of Prevention of Corruption Act, 1988 was added. Details of property acquired by Inderjeet Singh were also given in final report under section 173 Cr.P.C. Investigating agency thereafter submitted three supplementary challans under section 173(8) Cr.P.C. on 30.07.2012, 22.09.2012 and 03.01.2013 respectively. The trial court on perusal of material on record framed charges on 28.08.2011 to which accused pleaded not guilty and claimed trial. Case was thus, fixed for prosecution evidence. Trial made some headway thereafter and seventeen prosecution witnesses were examined. During the course of proceedings, trial court found that 42 cheques were issued by different DDOs on different dates. It also examined the question whether joint trial was possible. As it was considering this issue, main accused Inderjeet Singh moved an application under section 319 Cr.P.C. praying that DDOs namely R.C. Verma, B.B. Kaushik, A Mona Sriniwas (all IAS officers) and complainant Dinesh Yadav, Additional Deputy Commissioner be summoned as additional accused. Reply to this application was filed and arguments were addressed. It appears that application moved under section 319 Cr.P.C. was hotly contested by State on the ground that accused had no right to move application seeking summoning of additional accused. Trial court, thus, proceeded to decide the application under section 319 Cr.P.C. The issue regarding joinder of charges has not been raised by any party before this court. On consideration of entire material, the court came to the conclusion that R.C. Verma, then Additional Deputy Commissioner, P. Balakrishanan, Ram Kumar Gupta Officers of Canara Bank, Kaithal who allowed the cheques drawn by R.C. Verma to be cleared and DySP Narapjeet Singh (who conducted the investigation) needed to be summoned as additional accused. He also directed further investigation against complainant Dinesh Yadav & Mona A. Sreenivas. These officers have challenged the order by way of separate petitions (*CRM M-17875 of 2013 & CRM M-17874 of 2013*) insofar as the court directed further investigation regarding their role. Even State of Haryana has preferred a petition (CRM M-8606 of 2014) to challenge the impugned order. *CRM M-18017 of 2014* has been preferred by Inderjeet Singh seeking transfer of trial from the court at Kaithal to any other court. Another petition i.e. *CRM M-5878 of 2016* has been filed by him praying that action be initiated against additional accused summoned in the case. During the course of hearing, this court appointed Shri. R. Khosla, Sr. Advocate as amicus curiae to assist the court on various issues involved in this case.

I have heard learned counsel for the parties as regard the validity of the order passed. Learned counsel for additional accused vehemently argued that the trial court went beyond its jurisdiction while invoking its jurisdiction under section 319 Cr.P.C. The entire crime was committed by Inderjeet Singh as would be evident from perusal of final report under section 173 Cr.P.C. The court misdirected itself in proceeding to summon the complainant, bank officials and even the police officer who conducted the investigation. Learned amicus curiae, Mr. Khosla referred to the entire record and produced photocopies of certain cheques. Referring to same, he submitted that complicity of all the accused is writ large on the face of it. As there was interpolation in the cheques, considerably enhancing the amount to be drawn and this interpolation was visible to a naked eye, it is unbelievable that same could have escaped the notice of DDOs, who signed the cheques or the bank authorities while clearing the same. According to him, investigating officer put the entire blame on one official of DRDA namely Inderjeet Singh in order to give clean chit to senior officers, most of whom are members of Indian Administrative Service (IAS). He also submitted that investigation of fraud of this magnitude needs to be handed-over to an independent agency for further investigation. In the facts and circumstances of the case conduct of the investigating officer was also not above board. Counsel for Inderjeet Singh submitted that co-accused were deposing against him during pendency of connected petitions which is against law. He also prayed that matter be investigated by an independent agency. He submitted that he had moved an application for initiating proceedings against co-accused who have been summoned under section 319 Cr.P.C.

During proceedings of this case, trial before the court below remained stayed. Further investigation, however, continued in view of order passed in CRR No. 1837 of 2013. A coordinate bench of this court (Paramjit Singh, J) on May 31, 2013 directed that further investigation qua rest of the accused would continue.

Now I proceed to decide the question of validity of the order passed by the trial court summoning additional accused and necessity, if any, of further investigation or handing over the same to an independent agency. There is no dispute about the fact that interpolations were made in cheques in question and amount mentioned therein was highly inflated. Scheme which was floated for public benefit i.e. Total Sanitation Campaign Scheme was not only scuttled but its funds were defalcated by certain unscrupulous elements. A question now arises about the interpolation that came to notice of the DDOs while signing the cheques and also to the notice of the bank officers while clearing the same. Though this court has perused the cheques in question and feels that there is sufficient material to summon the additional accused to face trial, it does not deem it fit to give a finding on the issue as it may prejudice the trial. However, ample evidence is available on record to conclude that for the purpose of exercise of power under section 319 Cr.P.C. the trial court order is sustainable. It would be for the trial court to analyze the evidence on record and come to a firm conclusion as to the role of the accused. Plea of counsel for the petitioners that there is nothing to point an accusing finger towards the additional accused and on the basis of evidence/material on record, reasonable probability of conviction is not there, does not impress this court. Learned counsel for the additional accused have made number of submissions on merits of the case in order to show that there was no complicity of the officers. This court, however, finds that trial court has rightly summoned them to face trial. It is on record that bank reconciliation certificates were submitted fortnightly and monthly reports were prepared by the office of Additional Deputy Commissioner on that basis. Despite this, it remains unexplained how embezzlement escaped the notice of the senior officers. In this entire process, huge amount was embezzled allegedly in connivance with the officials. During investigation, handwriting expert was examined who opined that amounts originally filled in the cheques had been further inflated by adding words and figures. These cheques were signed by various DDOs. It is inexplicable how entire interpolation was done by one official at clerical level namely Inderjeet Singh. It needs to be examined whether complicity of senior officers and bank official was there in commission of the crime. It is on record that most of the forged cheques are either self drawn in the name of DDOs or in the name of accused Inderjeet Singh. The fact that there is forgery in such cheques either drawn on self by the concerned DDO or in the name of main accused Inderjeet Singh, lead to the probability that other accused connived with Inderjeet Singh. Trial court found that when government money is utilized certain formalities are followed such as preparation of vouchers, notings in the file and bank reconciliation certificate etc. However, neither vouchers/noting-sheets nor other relevant documents were produced before the trial court. Some of the record including tampered cheques may have been destroyed or withheld. Trial court also found that the FSL report which is scientific evidence was a strong circumstance pointing towards involvement of DDOs in the crime. I find no infirmity with this observation. As regards role of the bank officials it is well known that they are experts on such issues like clearing of cheques and have a keen sense of observation. They are able to detect minute discrepancies. It is incomprehensible how they overlooked apparent interpolation in the cheques visible to a naked eye.

A peculiar aspect of the case is that it is undisputed that forged cheques were allowed to cleared as genuine. It appears paltry sums were to be paid by the authority to certain individuals. By making interpolation in each such cheque, amount was enhanced to lakhs of rupees. It is not clear how these cheques which passed through various stages at official level, were signed by DDOs and cleared by bank, without any eyebrow being raised. DSP Narapjeet Singh, Incharge of SIT collected all the documents including cheques and sent them for opinion to forensic science laboratory. Despite a clear forensic opinion on record about the forgery in the cheques, he did not bother to interrogate the DDOs or bank officials. Instead he cited them as prosecution witnesses. This casts serious doubt about the role of the investigating officer. Witnesses who appeared before the trial court admitted that they were never associated in the investigation by DSP Narapjeet Singh. Besides, there is also an issue regarding recording of statement of B.B. Kaushik by the same officer DSP Narapjeet Singh. Trial court found that he had made a false statement before the court and this offence was punishable under section 218 IPC. Trial court thus rightly decided to summon DySP Narapjeet Singh as an additional accused as he appears to have turned the investigation in a particular direction. It is on record that cheques amounting to ₹27 lacs were drawn and encashed on the last day of posting of RC Verma, then Additional Deputy Commissioner, Kaithal. Though the total amount drawn on the last day was much more, at least cheques of ₹27 lacs were forged. Surprisingly, investigating officer did not even interrogate R.C. Verma. I, thus find that invocation of power by trial court under section 319 Cr.P.C. is in accordance with the law laid down by apex court in *Hardeep Singh vs. State of Punjab & ors. 2014(1) RCR (Crl.) 623(SC)*.

As regards further investigation directed by the court, it was submitted that this direction was given by it *suo moto* without any application in this regard. The court had, thus, no jurisdiction to pass such an order. This court finds this plea untenable. A perusal of the order shows that trial court on examining the entire material wanted to handover the investigation to an independent agency like CBI but its hands were tied as he had no jurisdiction to pass such an order. The question whether he could have directed further investigation can be answered, if origin of this power is available in the Code. Section 173 (8) of the Code empowers the court to direct further investigation. In view of material that came on record and alleged collusion of the investigating officer, it appears that trial court had no option but to invoke the said provision. It acted on the basis of a composite application moved before it by the main accused Inderjeet Singh leveling allegations against DDOs and others. I cannot find any fault with the same. In the facts and circumstances of the case and to ensure that ends of justice are met, further investigation was not only necessary but imperative. Needless to observe that any direction given by court for further investigation cannot be taken as a direction to present challan indicting the accused. Only requirement is investigation should be fair and impartial and final report should be based on the material collected during such investigation. Any observations of the court below in this regard shall be construed accordingly. As regards prayer of amicus curiae Mr. Khosla and counsel for accused Inderjeet Singh for handing over the investigation to CBI, I feel that same may not be appropriate at the advance stage of trial. This question has arisen because there is allegation that the investigating officer who was entrusted with the job, did not act in a fair and impartial manner. He did not conduct the investigation as per procedure in his effort to exonerate the senior officers. This court, however, feels that proceedings have been unduly delayed. Thus, it shall be proper if a direction is given to the SIT constituted in the matter to complete the investigation, if any, pending against remaining accused within a period of six weeks and submit a report before the court below. In the eventuality it is not able to do so, the question of handing over the same to an independent agency shall remain open. In that case judgment reported as *Vinay Tyagi vs. Irshad Ali @ Deepak & ors. 2013(5) SCC 92* would be relevant. This court expects the trial court to proceed further with the matter expeditiously keeping in view the provisions of section 309 Cr.P.C. Needless to say that court would carefully examine the evidence/material on record, sift the grain from the chaff and arrive at just conclusion while delivering its verdict. Observations made hereinabove shall not be considered by the trial judge as an expression of opinion on merits of the trial proceedings.

In view of above observations, *CRR No. 1837 of 2013, CRR No. 1756 of 2013, CRR No. 1836 of 2013 & CRR No. 1705 of 2013* challenging the order whereby petitioners have been summoned as additional accused in exercise of powers under section 319 Cr.P.C. and *CRM M-8606 of 2014* preferred by State of Haryana are hereby dismissed.

CRM M-17875 of 2013 & CRM M-17874 of 2013 posing a challenge to further investigation are also dismissed. No cause of action survives in the petition (*CRM M-5878 of 2016*) preferred by accused Inderjeet Singh seeking initiation of proceedings against additional accused summoned under section 319 Cr.P.C. Same is hereby dismissed. *CRM M-18017 of 2014* filed by same accused (*Inderjeet Singh*) seeking transfer of case from the Sessions court at Kaithal to any other court, is untenable. Prayer is rejected and petition is dismissed.

December 06, 2016 (RAJAN GUPTA)
Ajay JUDGE

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No