IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CRR No.1030 of 2014 (O&M)

Ram Gopal Sahota

… Petitioner

Versus

Central Bureau of Investigation and others

… Respondents

2. CRR No.2521 of 2014 (O&M)

Ram Gopal Sahota

… Petitioner

Versus

Central Bureau of Investigation and others

… Respondents

Date of decision: 12th July, 2016

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Mansur Ali, Advocate for the petitioners.

Mr. Sukhdeep S. Sandhu, Advocate
Standing Counsel for CBI.

CRR No.1030 of 2014
Mr. Harpal Singh, Advocate for respondents No.6 and 8.
Mr. L.S. Lakhanpal, Advocate for respondent No.9.
Mr. Kulvir Narwal, Advocate for respondent No.17.

CRR No.2521 of 2014
Mr. Amit Kashyap, Advocate for respondent No.5.
Mr. Peeush Gagneja, Advocate for respondents No.6 & 8.
Mr. L.S. Lakhanpal, Advocate for respondent No.9.
Mr. Kanwal Goyal, Advocate for respondent No.10.
Mr. C.L. Verma & Mr.Aditya Dassaur, Advocates
for respondents No.11, 13, 16, 17, 22, 25 & 32.
Mr. A.S. Khinda, Advocate for respondents
No.12, 14, 15, 23 & 26.
Mr. Kulvir Narwal, Advocate for respondent No.17.
Mr. Aman Dhir, Advocate for respondent No.19.
Mr. Subhash Kumar, Advocate for respondent No.20.
Mr. Vivek Suri, Advocate for respondent No.27.
Mr. J.S. Bhinder, Advocate for respondent No.29.

FATEH DEEP SINGH, J.

These two revision petitions bearing CRR No.1030 of 2014 (hereinafter referred to as, 'the first petition') and CRR No.2521 of 2014 (hereinafter referred to as, 'the second petition') both preferred under Section 401 Cr.P.C. though by the same accused wherein he has challenged two orders passed in two separate applications both under Section 319 Cr.P.C. for summoning certain persons detailed separately in these two applications as accused though are directed against two different orders dated 10.01.2014 and 12.02.2014 respectively whereby the trial Court of learned Special Judge, CBI, Patiala dismissed both these applications of Accused/Applicants and hence on account of consanguinity of facts and common law points involved, are thus, being taken up together as it will not only facilitate brevity but would be in the interest of justice as well.

It was during the course of usual administrative duties, Superintendent of Police, Jhajjar (Haryana) came across startling fact that certain persons numbering around 67 residing in the State of Haryana with shady background had managed to procure arms licenses from District Ferozepur (Punjab) and as a consequence of which verifications were undertaken from concerned offices at Ferozepur leading to registration of FIR No.206 dated 18.06.2001 at Police Station City Bahadurgarh (Haryana) under relevant provisions and a subsequent FIR bearing No.53 dated 25.07.2001 was registered at Police Station Ferozepur Cantt. pertaining to this revelation. From this all, it transpired that in a period of two-and-a-half years between years 1998 to 2001 more than 27000 arms licenses were got issued for various categories of fire-arms within the District of Ferozepur and all of them were under the signatures of the present petitioner Ram Gopal Sahota, PCS who at the relevant time was posted as ADC, Ferozepur and had exercised delegated powers of the District Magistrate.

Faced with tardy investigations apparently on account of undesirable political interferences and clout wielded by various culprits when the investigations had hit the roadblock, a Criminal Misc. No.29290-M of 2001 was preferred by two ex-legislators namely Mohinder Kumar Rinwa, Ex MLA Fazilka and Hans Raj Jossan, Ex MLA Jalalabad (Ferozepur) and this Court vide orders dated 05.02.2002 handed over the investigations to Central Bureau of Investigation whereby the present two cases were got registered afresh on 08.04.2002 by the CBI leading to investigations and submission of two separate challans against different sets of accused including the petitioners.

It was during the course of trial after certain prosecution witnesses were examined in each of the two sessions cases, separate applications under Section 319 Cr.P.C. as detailed above were moved by the accused side and which through the impugned orders detailed above stood dismissed and that is how the accused applicants are before this Court in these two separate revision petitions.

Heard Mr. Mansur Ali, Advocate for the accused/petitioners; Mr. Sukhdeep S. Sandhu, Advocate Standing

Counsel for CBI as well as the counsel representing various private respondents and perused the records of the case.

After giving thoughtful consideration to the respective submissions of the parties to these petitions spanning over a long period of time and on perusal of the records. It permeates that since the beneficiaries of these arms licenses who have readily admitted that they got issued these licenses but through an agent admittedly after making certain payments and instead of having been arrayed as co-accused of the applicant/revisionists rather have been examined as prosecution witnesses. The locus-standi of accused/appellants whether in such a situation they can move application under Section 319 Cr.P.C. and that these beneficiaries who have been examined by the prosecution as its witnesses and have admitted in their examinations in chief as well as cross-examinations these factual aspects, can be summoned as additional accused and the very ambit of Section 132 of the Evidence Act as well as Article 20(3) of the Constitution of India and its affect thereon in the present scenario are the moot issues.

It is conceded to by both sides as to the domicile status of the beneficiaries, as most of them are not residents of the District and the State from where these arms licenses have been issued and that these licenses have been issued on the basis of procured medical certificates, police verifications residency proof so on and so forth as required for a person to enable him to get arms license under the relevant provisions of the Arms Act, 1959 as well as Arms Rules, 1962.

Shockingly enough, even after this fraud has been unearthed, cases having been registered, as has been canvassed by the counsel representing CBI, the District authorities are still in slumber who have not initiated any action in cancellation of these arms licenses or disenabling the beneficiaries from the use of these fraudulently procured arms licenses.

The contentions of Mr. Mansur Ali, Advocate who has heavily placed reliance on the interpretation of Section 319 Cr.P.C. by citing **'Hardeep Singh v. State of Punjab & others' 2014(1) RCR (Criminal) 623; 'Chiraqdalvi Mohammed Abdul Azeem Ahmed v. The State' 1998 Cri.L.J. 3112; 'Lok Ram v. Nihal Singh & another' AIR 2006 SC 1892(1) and 'Vasudevan Nair v. State of Kerala' 2005 Cri.L.J. 1457** has sought to impress upon this Court that the Court has ample powers to summon a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged and thus, has sought to enlarge the scope and ambit of exercise of these powers by the Court and has sought to hammer-home the point that the 'evidence' mentioned in this statutory provision means and includes the 'self inculpatory' statements so made on oath by these beneficiaries and therefore, the same has to be significantly taken note of by the Court to exercise such powers. To further his submissions learned counsel has strongly placed reliance upon **'Hemraj Poonamchand v. Babulal Bhagirath' AIR 1962 MP 241; 'Tunoo Mia v. Emperor' 1912 Cri.L.J. 173; 'Province of Bihar**

v. Bhim Bera & others' AIR (34) 1947 Patna 284; and 'Peoples Insurance Co. Ltd. v. Sardar Sardul Singh Caveeshar' AIR 1962 Punjab 101 (V 49, C31) to bring support to his arguments that privilege under Section 132 Evidence Act need not be absolute to save these beneficiaries and the Court ought to summon them as they have admitted all these fraudulent procedures undertaken culminating in issuance of arms licenses and therefore these beneficiaries having testified against themselves cannot wriggle out of this admission in the Court of law.

On behalf of the respondents, Mr.Sukhdeep Singh Sandhu, learned Standing Counsel for the CBI along with the counsel representing the private respondents have placed reliance upon **'R.Dineshkumar @ Deena v. State Rep. by Inspector of Police and others' 2015(2) RCR(Criminal) 297; 'State (Delhi Administration) v. Jagjit Singh' 1989 AIR (SC) 598; 'Satya Narayana Sharma v. State of Rajasthan' 2001(4) RCR (Criminal) 377; 'State v. Tmt. Indirakumari and others' 2003 Cri.L.J. 4749; and 'Amit Jogi and others v. State of Chhatisgarh' 2006 Cri.L.J. 3497** to bear out their stand that while testifying even if a witness makes an inculpatory statement there lies a total discretion of the Court in refusing to add additional accused by the exercise of powers under Section 319 Cr.P.C. and further to hold out that by virtue of Section 132 of the Evidence Act there can be no launching of prosecution against persons making a self-inculpatory statement as the same is on the basis of answers given by a person while testifying as a witness before a Court of law.

Appreciating the arguments of the two sides in the light of the fact that a very sensitive issue affecting public order, rules and the law of the land appears to have been subverted by the higher echelons of the administration. As is apparent in one case the break-up is of 24 accused who are involved in this racket and comprises of 14 police officials, 7 gun dealers, a Municipal Councilor/Lamberdar, a private individual and ADM under whose signatures these arms licenses were got issued. Whereas the break-up in the second case out of 30 accused, 11 are police officials, 8 gun dealers, 7 Municipal Councilors/Lamberdars, 3 private individuals and one is the accused who happens to be the ADM and these figures are in themselves reflective of the enormity of the scandal wherein even the petty clerks working in the office of District Magistrate appears to have actively connived as such attainments cannot be accomplished by outsiders alone unless there is active support within the system and therefore such a matter needs to be dealt with great care and caution else it would send wrong signals to the public at large that such breakers of law never came to be booked in a country which is already wrecking under the weight of innumerable scams and scandals. It is by no means put to question that the Arms Act 1959 as well as Arms Rules 1962 lays down the procedure for procuring of arms licenses for which element of domicile of the place is of utmost necessity and which is to be verified and vouched for by the police authorities after applications accompanied by the affidavit and sworn attestation fulfilling the required qualifications as prescribed under the Act and the Rules are made by the prospective beneficiaries and which is of-course subject to issuance of medical certificate by the competent medical authority. As has been brought to the notice of this Court, all these documents purporting to be of the beneficiaries/applicants are certainly either fake or have been fraudulently made when apparently the beneficiaries/applicants are not either domicile in the State or have ever appeared before these Authorities, are in itself suggestive what means might have been adopted to channelise this scam where none in the system can seek rescue on any grounds, however high or low he may be in the hierarchy of administration under which these documents were got made culminating into issuance of arms licenses.

No doubt Court has ample powers under Section 319 Cr.P.C. to summon or not summon a person by use of these provisions. Section 319 Cr.P.C. is reproduced as below to lay emphasis:

> "319. Power to proceed against other persons appearing to be guilty of offence:-
>
> (1) 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.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial or, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

From this all, it is clear that the Court may in its judicial discretion proceed under these provisions, if evidence collected/produced in the course of any inquiry into or trial of an offence prima-facie satisfies the Court that such person has committed any offence in which he can be tried with the other accused already facing trial, and thus, evidence against that particular person ought to be there and which needs to qualify such a test and be on a pedestal that it strengthens the conscience of the Court that the person so sought to be summoned is certainly prima-facie involved in commission of the offence. Thus, ratios cited on behalf of the petitioners **Hardeep Singh's case; Chiraqdalvi Mohammed Abdul Azeem Ahmed's case; Lok Ram's case and Vasudevan Nair's case (ibid)** being established ratios certainly need not be gone into for the sake of appreciation to that aspect.

In the light of submissions, Article 20(3) of the Constitution of India is reproduced here below to lay emphasis:

> *"No person accused of any offence shall be compelled to be a witness against himself."*

A plain reading of the same illustrates clearly in no uncertain terms that the language of these provisions is very much clear that no such person who is "accused" of an offence shall be compelled to be a witness against himself.

Admittedly as on date giving strict meaning to the term 'accused' none of the beneficiaries till date can even be loosely termed as an accused. The term 'accused' has nowhere been comprehensively defined in the Codes governing the criminal law and plainly speaking is a person against whom accusations have been levelled of having committed a criminal act which is an offence. As is there on the records and could not be displaced by Mr.Mansur Ali, Advocate representing the revisionists that none of these persons so sought to be summoned as an accused can be even termed as an accused loosely at this juncture. However, under Article 20(2) of the Constitution it is only when a person can be said to be an accused of any offence and is thus compelled to give evidence and on the basis of such compulsion ultimately leads to an accusation against him is certainly not, to the mind of this Court, covered under the ambit of Article 20(2) of the Constitution of India and which comes into play when the individual concerned is a person accused of an offence and that he was compelled to be a witness against himself, and therefore, it emancipates that the expression 'accused of an offence' must mean formally accused in *presenti* not in *futuro* – not even imminently. The expression 'to be a witness against himself' means more than the Court process. Any giving of evidence, any furnishing of information, if likely to have an incriminating impact, answers the description of being witness against oneself. At that very juncture of time when the applications under Section 319 Cr.P.C. were moved certainly these persons were never accused of any offence and therefore, thwarts the arguments which are sought to be put forth by the learned counsel for the petitioner.

Section 161(2) of the Cr.P.C. ensues that such a person who is bound to answer truly all questions relating to such case put to him by such officer, other than the questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture, can be compelled to answer and thus from it all, it comes to play to bring the statements in question with the prohibition of Article 20(3) of the Constitution of India, that the person accused must have stood in the character of an accused person at the time he made the statement and it is not enough that he should become an accused any time after the statement has been made.

The Hon'ble Supreme Court in **R.Dineshkumar @ Deena's case (ibid)**, has detailed at length the ambit of Section 319 Cr.P.C. as well as Section 132 of the Evidence Act and has considered the sweep of Article 20 of the Constitution of India as laid down by the Hon'ble Supreme Court in **'Nandini Satpathy v. P.L. Dani & another' (1978)2 SCC 424,** where the Hon'ble Supreme Court has remarked that protection afforded under Section 161(2) Cr.P.C. is wider than the protection afforded by Article 20(3) of the Constitution of India and has sought to rely upon 'cluster of rules' which were grouped under the term 'privilege against self-incrimination', which were there in practice in the Court of Star Chamber and that has led to enactment of Article 20(3) of the Constitution of India, and had opined that the protection of Article 20(3) of the Constitution is available not only to the person who is facing trial before a Court of law but to a person embryonically accused by being brought into police diary, popularly termed as 'suspects'.

The Hon'ble Apex Court was of the view that it is the prerogative of the prosecution which could have examined somebody as a witness, even though against whom there is some material indicating his participation in a crime and though holding out that it is right of the prosecution to decide whom to prosecute and therefore, decline to array a person as co-accused and rather examined him as a witness for the prosecution, and for which their Lordships have placed reliance on an earlier view laid down in the case of **'Laxmipat Choraria & others v. State of Maharashtra' 1968 Cri.L.J. 1124.** Furthermore, in another view in the case of **State (Delhi Administration) v. Jagjit Singh (ibid)**, the Hon'ble Supreme Court interpreting the provisions of Section 132 of the Evidence Act has clearly held that proviso to this Section expressly provides that such answer which a witness is compelled to give shall not subject him to any arrest or prosecution nor the same can be proved against him in any criminal proceeding except a prosecution for giving false evidence by such answer, and therefore, necessitates reproducing these provisions which are as follows:

> "132. Witness not excused from answering on ground that answer will criminate.
>
> A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:
>
> Proviso – Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer."

Same were the views aired by different High Courts which have been well enunciated in **'M.P. Gangadharan v. State S.I. of Police' 1989 Cri.L.J. 2455; 'Mahesh Kumar Soni v. Ram Swaroop**

and others' 2012(1) RCR (Criminal) 802; 'Durga Datt Pradhan v. CBI' 2013(7) RCR (Criminal) 2603; and 'Amit Jogi and others v. State of Chhattisgarh' 2006 Cri.L.J. 3497. Thus from it all, it clearly ensues that by virtue of Section 132 of the Evidence Act, the law in its wisdom has rightly afforded protection to such witnesses of the prosecution and with the bringing about of Article 20(3) of the Constitution of India certainly smashes all the hopes of the revisionist for the success in this endeavour. In the light of what has been detailed and discussed above, the learned Court below has given a thoughtful consideration, well reasoned findings and has given a judicious decision dismissing the applications of the applicants. Thus, neither there is any illegality much less any impropriety in these findings which could necessitate indulgence by this Court. The revision petitions are hopelessly without any merit and stand dismissed.

In the light of inordinate delay that has occasioned in disposal of the matter before the trial Court, impels this Court to issue necessary directions to the trial Court to expedite the trial by giving short adjournments and to ensure that the same is accomplished without much loss of time.

(FATEH DEEP SINGH)
JUDGE

July 12, 2016
rps

Whether to be referred to the Reporters or not? Yes