

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

CRR No. 465 of 2014

Date of decision : 06.12.2016

R.K. Rao

...Petitioner

V/s

State of U.T. Chandigarh & anr.

...Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. P.S. Ahluwalia, Advocate for the petitioner.

Ms. Ashima Mor, Advocate for U.T. Chandigarh.

Mr. K.S. Kang, Advocate for respondent no. 2.

RAJAN GUPTA J.

Present revision petition emanates from an order passed by Special Judge, Chandigarh whereby he summoned petitioner-R.K. Rao, then Assistant Estate Officer, U.T. Chandigarh as an additional accused in exercise of powers under section 319 Cr.P.C.

Brief facts of the case are that a vigilance inquiry was conducted with regard to auction of commercial plot no. 55-56, Sector 46-C, Chandigarh on 26.02.1991. One A.B. Financers Pvt. Ltd. offered the highest bid of ₹26,90,000/- and deposited 10% thereof as bid money. Terms and conditions of sale were signed by company's representative namely Tehal Singh. Vide letter dated 18.12.1991, Estate Officer, U.T. Chandigarh issued allotment letter in favour of M/s A.B. Financers Pvt. Ltd. Tehal Singh was one of the Directors of the company having 20% share. However, physical possession of the site was handed-over to another company namely M/s A.B. Marketing Private Limited on 14.01.1992. Thereafter, construction

started on the site and was completed up to IIInd floor. M/s A.B. Marketing Pvt. Ltd did not deposit any installments thereafter. Resultantly on 02.08.1995, Estate Officer passed an order cancelling the allotment. Tehal Singh wrote a letter to the Estate office stating that the bid amount i.e. ₹2,69,000/- was in fact deposited by the company M/s A.B. Financers Pvt. Ltd and not by M/s A.B. Marketing Pvt. Ltd. He had signed the relevant papers on behalf of M/s A.B. Financers Pvt. Ltd. However, he did not receive any letter from the Estate Officer regarding the allotment. Without any authority M/s A.B. Marketing Pvt. Ltd deposited an amount of ₹4,03,400/- with the Estate Officer by making certain interpolations in the record. The word 'Financers' was substituted by the word 'Marketing'. Whole fraud allegedly occurred in connivance with the officials of the Estate Office due to which another company succeeded in getting control of the commercial property. Though name of Tehal Singh figured in the list of Directors but neither any money was drawn from his Account nor he was taken into confidence. He was, thus deprived of valuable property despite having participated in the auction himself. Allotment letter no. 2004/CPC-5023/CIA-1 dated 18.12.1991 was issued in favour of M/s A.B. Marketing Pvt. Ltd. On the basis of complaint of Tehal Singh, a vigilance inquiry ensued. He stated before the Enquiry Officer that despite the fact that his company was successful bidder in the auction, possession of the property was handed-over to another company namely A.B. Marketing Pvt. Ltd. He denied having signed the possession letter in respect of the property alongwith two other directors K.C. Arora and Neelam Arora as he never appeared before the authority to take possession of the site. In the vigilance inquiry it was found that signatures of Tehal Singh, on relevant document(s), were forged. This was done in connivance with various officials of Estate

office including R.K. Rao (petitioner herein). In this manner, commercial site no. 55-56 in sector 46-C Chandigarh was allotted to M/s A.B. Marketing Ltd. without taking consent of the actual bidder i.e. Tehal Singh of M/s A.B. Financers Pvt. Ltd. Possession of the property was thereafter handed-over to K.C. Arora and Neelam Arora. Possession slip bore signatures of both K.C. Arora and Neelam Arora and forged signatures of Tehal Singh. Resultantly, case was registered under sections 420, 467, 468, 471 read with section 120-B IPC and Section 13(1)(d) and 13(2) of Prevention of Corruption Act, 1988. Detailed investigation followed and final report was submitted before the competent court of jurisdiction. It appears investigating agency filed challan against officials of Estate office and K.C. Arora. It, however, remained silent about the role of the Assistant Estate Officer, R.K. Rao. It is not clear whether his role was looked into by the agency. An application was moved by Tehal Singh under section 319 Cr.P.C. to summon R.K. Rao as an additional accused. Special Judge, Chandigarh found substance in the allegations against R.K. Rao and decided to summon him as additional accused. Aforesaid order has been challenged before this court.

Learned counsel for the petitioner vehemently argued that there is hardly any material to support the allegation that additional accused was involved in the commission of crime. Special Judge gravely erred in proceeding on the basis of assumptions to come to a conclusion that petitioner needed to be summoned. He had to record his satisfaction that there was reasonable possibility of conviction of the additional accused before deciding to invoke Section 319 Cr.P.C.

Plea was vehemently opposed by learned counsel appearing for the complainant. According to him, fraud of this magnitude could not have taken place without involvement of the senior most officer at the relevant

time i.e. Assistant Estate Officer. According to him, there is incriminating evidence on record to show his involvement. However, investigating agency had shown favour to him and given him a clean chit.

I have heard learned counsel for the parties and perused the findings of the court below. There is no doubt about the fact that investigating agency found that accused K.L. Arora and Neelam Arora had acted in connivance with officials of the Estate office. It, thus arraigned officials of the estate office as accused. It is on record that it was Tehal Singh who was present at the time of auction and gave highest bid on behalf of M/s A.B. Financers Pvt. Ltd. He deposited ₹2,69,000/- on the spot as 10% of the bid money vide receipt no. 526 dated 26.02.1991. Even terms and conditions of sale were signed by him. Balance 15% amount was to be deposited within 30 days from the date of auction. On 27.03.1991, however, another company i.e. M/s A.B. Marketing Pvt. Ltd. sprung up and requested the Estate Officer to accept said 15% amount i.e. ₹4,03,800/-. This request was duly accepted by Assistant Estate Officer. He allowed the company to deposit the amount. Concerned officials of Estate office namely Sucha Ram, Clerk, Dharam Chand Bajaj, Assistant, Mam Chand, Senior Assistant and A.S. Khepar, Superintendent were privy to all this.

Now this court may delve in to the role attributed to the petitioner R.K. Rao. Admittedly, he is the person who issued letter no. 2004/CPC-5023/CIA-1 dated 18.12.1991 in his capacity as Assistant Estate Officer. This letter was issued in favour of M/s A.B. Marketing Pvt. Ltd. who was not the original bidder. Tehal Singh was shown as Director of this Company but his signatures were forged. Before the trial court, Kulwant Singh, DSP who appeared as PW14 deposed that petitioner had seen the relevant documents which were sent for his scrutiny before allotment of the

site to M/s A.B. Marketing Pvt. Ltd. Another witness namely Sant Ram who appeared as PW11 proved that letter dated 18.12.1991 in favour of M/s A.B. Marketing Pvt. Ltd bore signatures of petitioner R.K. Rao. Besides, PW18 Tehal Singh deposed in terms of his complaint and clearly leveled allegations against R.K. Rao. It is on this basis that trial court came to the conclusion that there was sufficient evidence available on record, to summon the petitioner in exercise of power under section 319 Cr.P.C. Testimony of various prosecution witnesses and documents were referred to in the order. It is evident that in the final report submitted by the investigating agency, no tangible reason has been given for exonerating the petitioner. In case of crime of this nature where property involving crores of rupees is allotted to a company not entitled to same, it is difficult for this court to accept the plea that only Clerks and Assistants were involved in the transaction, particularly when letter no. 2004/CPC-5023/CIA-1 dated 18.12.1991 issued in favour of M/s A.B. Marketing Pvt. Ltd. bears signatures of the petitioner R.K. Rao. However, this court does not deem it fit to express an opinion on the merits of the case. It only intends to deal with the issue whether trial court rightly exercised its power under section 319 Cr.P.C. From the evidence on record it can be safely concluded that order passed by trial court suffers from no infirmity. Though various judgments have been cited before this court, I feel that in view of law laid-down by apex court in *Hardeep Singh vs. State of Punjab & ors.* 2014(3) SCC 92, reference to other judgments is not necessary. Evidence on record shows that trial court has exercised its power under section 319 Cr.P.C. within the parameters laid-down by apex court. Letter dated 18.12.1991 issued by petitioner in favour of M/s A.B. Marketing Pvt. Ltd who was not the original participant in the auction, evidence of various prosecution witnesses and circumstances of the case,

show that petitioner has been rightly arraigned as additional accused. Needless to say if the investigating agency exonerates an accused in its final report without assigning any reason, trial court is not powerless. It would invoke section 319 Cr.P.C. and summon him as an accused to face trial. Intent of legislature to include section 319 in the code was to guard against such eventualities. In my considered view, exercise of power by the trial court under this provision in this case, is in consonance with the law laid down in Hardeep Singh's case (supra). In view of considerable delay which has been occasioned in the proceedings, trial court would endeavor to conclude the trial expeditiously. It would analyze the evidence on record during trial and come to an independent conclusion about role, if any, of the accused. It is on record that petitioner has ceased to be a public servant, thus, sanction for his prosecution may not be necessary.

In view of above, present revision petition is without any merit and is hereby dismissed. Observations made hereinabove shall not be considered by the trial judge as an expression of opinion on merits of the trial proceedings.

December 06, 2016

Ajay

(RAJAN GUPTA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No