

Criminal Revision No.3370 of 2016

[1]

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

Sr. No. 119

Criminal Revision No.3370 of 2016

Date of decision: September 19, 2016

Harvinder Singh

.... Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. H.R. Bhardwaj, Advocate,
for the petitioner.

JASPAL SINGH, J.

Challenge in the revision petition is to order dated August 04, 2016, passed by Judicial Magistrate Ist Class, Ambala in case FIR No.65, dated May 26, 2012, under Sections 406 & 420 of IPC, registered at Police Station Naggal, District Ambala whereby an application moved by complainant-petitioner Harvinder Singh under Section 319 Cr.P.C. for summoning accused Jagtar Singh as additional accused has been dismissed.

2. The instant FIR has been registered on the basis of complaint

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moved by the petitioner on the allegations that he has been cheated by the accused persons on the pretext of sending him abroad and an amount of ₹ 5 lacs has been extracted from him by the accused persons. During trial, prosecution moved an application under Section 319 Cr.P.C. for summoning Jagtar Singh as additional accused by alleging that complainant had named Balwinder Singh and Jagtar Singh for inducing him to pay ₹ 10 lacs for settling him abroad. Complainant paid an amount of ₹ 5 lacs to them. However, police challaned only Balwinder Singh. The prosecution witnesses including the complainant specifically named Jagtar Singh as one of the accused in the alleged crime and therefore, prosecution prayed for summoning Jagtar Singh to face trial along with his co-accused.

3. This court has given an anxious thought to the aforesaid submissions made by learned counsel for the petitioner and gone through the record available on file.

4. The power under Section 319 Cr.P.C. is a discretionary power. For the purpose of summoning of any person under Section 319 Cr.P.C. there should be evidence on record against him during the course of inquiry or trial. In the present case, complainant has levelled the allegations under Sections 406 & 420 IPC against the accused and alleged that the accused were entrusted with ₹ 5 lacs on the pretext of settling him abroad. A perusal of the file shows that earlier petitioner lodged a complaint dated March 07, 2012 (Ex.PA) to SHO, Police Station Naggal, Ambala alleging that one Balwinder Singh resident of Kaithal, Village Kakeri and his son Amrik Singh, resident of foreign country, Austria persuaded him for sending him

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abroad and extracted ₹ 5 lacs from him. His passport and ration card were also withheld by them. In the said complaint name of respondent No.2-Jagtar Singh, sought to be summoned under Section 319 Cr.P.C. in the present case, was not mentioned. On March 26, 2012, a compromise Ex.PW1/A was arrived at between the petitioner and accused Balwinder Singh. As per the terms of compromise, an amount of ₹ 3,60,000/- was settled to be given by accused Balwinder Singh to Sucha Singh son of Ajmer Singh in the Gurudawara, who will receive the aforesaid amount on behalf of complainant on April 11, 2012. However, the amount could not be paid on the said date. Subsequently, as per the Ex.PW1/B, respondent No.2-Jagtar Singh took the responsibility to pay the alleged amount to complainant till April 18, 2012. But the matter could not be settled. Resultantly, another complaint dated May 11, 2012 Ex.PW3/A was moved by the complainant and for the first time, complainant named the accused-Jagtar Singh for his role in the alleged commission of crime. No reasonable explanation has been given by the petitioner as to why Jagtar Singh was not named earlier in complaint dated March 07, 2012 Ex.PA. The instant application under Section 319 Cr.P.C. was moved by the petitioner on December 02, 2015, when the list of prosecution witnesses including the complainant had almost been exhausted. The delay in filing the present application is still un-explained and it is evident that the instant application has been moved with an intention to rope in respondent No.2-Jagtar Singh in the instant case, who has no direct nexus in the alleged commission of crime. The aforesaid facts defeat the ingredients enshrined under Section

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319 Cr.P.C. and no specific role could be attributed to proposed accused-
Jagtar Singh.

5. In the light of what has been discussed above, the instant
petition being devoid of merit is dismissed.

September 19, 2016
Avin/Ankur

(JASPAL SINGH)
JUDGE

Whether Speaking/Reasoned
Whether Reportable

Yes/No
Yes/No