

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR No. 435 of 2016 (O&M)

Date of Decision: 23.05.2016

Amaninder Singh Sekhon

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. J.S. Bedi, Sr. Advocate with
Mr. S.S. Brar, Advocate for the petitioner.

Mr. K.D. Sachdeva, Addl. A.G., Punjab.

Mr. Gobind Rai Sharma, Advocate for
the complainant.

TEJINDER SINGH DHINDSA.J

The instant revision petition is directed against the order dated 19.1.2016, passed by the learned Additional Sessions Judge, Faridkot in terms of which the present petitioner has been summoned to face trial as an additional accused in case F.I.R. No.44 dated 17.2.2011 under sections 419, 420, 465, 467, 468, 471, 474 and 120-B I.P.C, registered at Police Station, City Faridkot.

A brief narration of facts would be necessary.

F.I.R No.53 dated 4.5.2009 under sections 308, 325, 323, 341 read with Section 34 I.P.C was got registered at the instance of complainant Hardev Singh and against Harmanjit Singh son of Ajaib Singh with the allegations that he had given a *kapa* blow to the complainant. Such alleged accused Harmanjit Singh approached the present petitioner, who is a practicing Advocate to file an application seeking concession of anticipatory bail in the afore noticed F.I.R. The *Vakalatnama* was signed by such person as Harmanjit Singh and the present petitioner prepared an

affidavit in terms of the identity disclosed by Harmanjit Singh on 20.5.2009 and which was appended along with the bail application filed under Section 438 Cr.P.C. Such application was dismissed on 29.5.2009 by the court of learned Additional Sessions Judge, Faridkot. Upon dismissal of the anticipatory bail application Harmanjit Singh was arrested on 20.11.2009. Thereafter, Harmanjit Singh was also shown as arrested on 29.12.2009 on the basis of production warrants in F.I.R No.256 dated 1.10.2009 under section 420 I.P.C and in which he faced trial under the name of Harmanjit Singh and earned acquittal vide judgement dated 5.7.2010, passed by the Trial Court. State preferred an appeal against the judgement of acquittal. Upon notice having been issued to Harmanjit Singh and in pursuance to an inquiry marked by the then Sessions Judge, Faridkot it transpired that in fact Harmanjit Singh was Arun Kumar son of Diwan Chand, resident of Balbir Basti, Faridkot.

This led to the registration of present F.I.R No.44 dated 17.2.2011 under sections 419, 420, 465, 467, 468, 471, 474 and 120-B I.P.C, registered at Police Station, City Faridkot.

During the course of investigation and multiple inquiries having been held, present petitioner was found innocent and was placed in column no.2 in the challan presented on 30.7.2012.

An application under Section 319 Cr.P.C was moved by the prosecution and which has been accepted leading to the passing of the impugned order.

Perusal of the impugned order would reveal that the present petitioner has been summoned to face trial as an additional accused upon the deposition and statements recorded of PW-11 Saroj Bala and PW-31

Jaspal Singh and only on the basis that an affidavit had been filed by the present petitioner in the capacity of an Advocate along with an application under Section 438 Cr.P.C seeking concession of pre-arrest bail identifying the accused therein as Harmanjit Singh and as named in the F.I.R.

Counsel for the parties have been heard at length.

“Section 319 of the Code of Criminal Procedure reads as under:

“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 of, the offence upon which the inquiry or trial was commenced, 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 witnesses reheard;

(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.”

The extent of power with the Court to summon persons other

than the accused under Section 319 of the Code of Criminal Procedure to

stand trial in a pending case has come up for consideration before the Hon'ble Supreme Court in a number of decisions. In ***Lokpal v. Nihal Singh, 2006(2) RCR (CrL) 707***, it was observed as under:

“...The court, while examining an application under Section 319 of the Code, has also to bear in mind that there is no compelling duty on the court to proceed against other persons. In a nutshell, for exercise of discretion under Section 319 of the Code all relevant factors, including those noticed above, have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused.

It was furthermore observed:

“19. In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the court can take cognizance against them and try them along with the other accused. But, we would hasten to add that this is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken...”

In ***Lal Suraj @ Suraj Singh and another v. State of Jharkhand, 2009(1) RCR (Criminal) 504***, it had been held as follows:

“...The principle of strong suspicion may be a criterion at the stage of framing of charge as all the materials brought during investigation were required to be taken into consideration, but, for the purpose of summoning a person, who did not figure as accused, a different legal principle is required to be applied. A court framing a charge would have before it all the materials on record which were required to be

proved by the prosecution. In a case where, however, the court exercises its jurisdiction under Section 319 of the Code, the power has to be exercised on the basis of the fresh evidence brought before the court. There lies a fine but clear distinction.”

In *Hardeep Singh v. State of Punjab and others, 2014 (1)*

RCR (Criminal) 623, the Hon'ble Supreme Court held that the power under Section 319 of the Code of Criminal Procedure is a discretionary and an extra-ordinary power. The same is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. Such power is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some of the person/s may also be guilty of committing that offence. Only where strong and cogent evidence occurs against the person from the evidence led before the Court that such power should be exercised and not in a casual and cavalier manner. It was also observed that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of cross-examination, it would require much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 of the Code of Criminal Procedure.

In the considered view of this Court, the impugned order summoning the present petitioner as an additional accused cannot sustain in the light of the settled principles and parameters laid down by the Hon'ble Apex Court for exercise of powers under Section 319 Cr.P.C and as crystalized herein above.

The court below has completely overlooked the aspect that the petitioner in the capacity of an Advocate had filed an affidavit as per identity disclosed by Harmanjit Singh and who was named by the complainant Hardev Singh as such in the F.I.R. It may be noted that Harmanjit Singh alias Arun Kumar had even faced trial and had earned acquittal in case F.I.R No.256 and even at such stage his real name as Arun Kumar had not been revealed. It is only at the stage of appeal and when his service was not being effected, then, at the instance of the learned Sessions Judge, Faridkot an inquiry had been marked and which led to the revelation of his real name.

No evidence has come forth before the Trial Court while passing the impugned order to suggest that the petitioner had any previous knowledge of the fact that the real name of accused in F.I.R No.53 dated 4.5.2009 was not Harmanjit Singh but was actually Arun Kumar. There is no incriminating evidence whatsoever to show that there was any concern between the present petitioner and Harmanjit Singh alias Arun Kumar antecedent to the filing of the application supported by an affidavit under Section 438 Cr.P.C. Even the statements of PW-11 Saroj Bala and PW-31 Jaspal Singh have been perused having been placed on record and appended as Annexures P-12 and P-13 along with the instant petition and their deposition would clearly show that there is no reference to any conspiracy hatched by the present petitioner with the main accused Arun Kumar alias Harmanjit Singh. The deposition of these two witnesses is merely factual as regards an affidavit having been tendered by the present petitioner along with an application under Section 438 Cr.P.C of Harmanjit Singh, who otherwise is Arun Kumar in F.I.R No.53 dated 4.5.2009.

At best the present petitioner has verified the affidavit of the deponent, who claimed himself to be Harmanjit Singh. In the facts and circumstances of the present case, wherein no evidence has been led before the court to show any prior connection/concern or conspiracy of the petitioner with the main accused, the same would be construed as a conduct on the part of the petitioner which was bonafide and towards discharge of his professional duties as an Advocate. Under such circumstances, no offence would be made out against the petitioner. Reliance in such regard may be made to the decision of the Hon'ble Supreme Court in ***Hira Lal Jain Vs. Delhi Administration, 1972 A.I.R (S.C), 2598*** and the same having been followed by this Court in ***Attar Singh Vs. State of Punjab, 1986 (2) R.C.R (Criminal), 211.***

In view of the above, the present petition is allowed. The impugned order dated 19.1.2016, passed by the learned Additional Sessions Judge, Faridkot qua the present petitioner, is quashed.

(TEJINDER SINGH DHINDSA)
JUDGE

23.05.2016

lucky

Whether to be referred to Reporter? Yes.