

CRM-M-24414 of 2014

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In the High Court of Punjab and Haryana at Chandigarh

CRM-M-24414 of 2014

Date of Decision:17.5.2017

Jaswant Singh and another

---Petitioners

vs.

State of Punjab and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Manuj Nagrath, Advocate
for the petitioners

Mr. Ankur Jain, AAG, Punjab

Mr. H.S.Dhindsa, Advocate
for respondent No. 2

Rekha Mittal, J.

The petitioners pray for quashing of FIR No. 28 dated 3.5.2012 under Sections 406, 498-A, 294, 506 of the Indian Penal Code (in short “IPC”) registered at Police Station, Women Cell, Ludhiana, orders dated 11.6.2013 (Annexure P-6) passed by the Judicial Magistrate Ist Class, Ludhiana and dated 16.5.2014 (Annexure P-7) by the Additional Sessions Judge, Ludhiana whereby order passed by the Judicial Magistrate Ist Class summoning the petitioners under Section 319 of the Code of Criminal Procedure (in short “Cr.P.C.”) has been affirmed.

Counsel for the petitioners has submitted that the aforesaid FIR

was registered by Ranjit Singh father of Pawanjit Kaur, married to accused Gurjot Singh Sekhon on 26.1.2011. The complainant lodged FIR against Gurjot Singh Sekhon and his parents but name of the petitioners did not figure in the FIR. After due investigation, challan was presented against Gurjot Singh, Kanwaljit Singh and Daljir Kaur (Annexure P-2). All the three accused against whom report under Section 173 Cr.P.C. was submitted were declared as proclaimed offenders. After recording statements of Sarabjit Singh PW1 and Ranjit Singh PW2, an application under Section 319 Cr.P.C. was filed for summoning Kushpreet Singh, Kamalpreet Kaur, Jaswant Singh, Kiranjit Kaur, Balwant Singh and Karam Singh.

After having heard counsel for the complainant as well as Additional Public Prosecutor for the State, the application was disposed of by the trial court vide order dated 11.6.2013 and the petitioners namely Jaswant Singh and Kiranjit Kaur were summoned to face trial whereas application against Kushpreet Singh and others was ordered to be dismissed. The petitioners challenged the order passed by the trial court in revision but the same did not find favour with the Additional Sessions Judge, Ludhiana and as a result, order passed by the trial court was affirmed.

Counsel for the petitioners has submitted that satisfaction recorded by the trial court for summoning the petitioners does not stand the test of judicial scrutiny when the case is examined in the light of authoritative enunciation of law laid down by Hon'ble the Supreme Court of India in *Hardeep Singh vs. State of Punjab and others 2014(1) RCR*

(Criminal) 623. To substantiate his contention, counsel would urge that there was no additional material brought on record in the statements of Ranjit Singh and Sarabjit Singh viz-a-viz the materials produced during investigation wherein the investigating agency was not satisfied qua involvement of the petitioners in the crime. It is argued with vehemence that the revisional court without appreciating the matter in right perspective has affirmed the findings recorded by the trial court knowing fully well that power under Section 319 Cr.P.C. is extraordinary in nature and is to be used sparingly.

Another submission made by counsel is that as the accused against whom the charge sheet was filed by the police were declared as proclaimed offenders and did not cause appearance before the trial court, there is no occasion of the petitioners being tried together with the accused already facing trial, envisaged under Section 319 Cr.P.C.

Counsel representing State of Punjab assisted by counsel for the complainant has supported the impugned order with the submission that the trial court has held that active involvement of Jaswant Singh and Kiranjit Kaur is made out from statement of complainant, therefore, creating sufficient grounds to summon the petitioners.

I have heard counsel for the parties and perused the records.

Concededly, Gurjot Singh and his parents against whom report under Section 173 Cr.P.C. was submitted for offence under Sections 406, 498-A, 294, 506 IPC were declared as proclaimed offenders and even challan was presented against them being the proclaimed offenders. The prosecution examined Sarbjit Singh PW1 and Ranjit Singh PW2 under

Section 299 Cr.P.C. and the said fact is duly recorded in the reply by way of affidavit of Rattan Singh Brar, Deputy Superintendent of Police, NRI, Ludhiana filed on behalf of the respondent-State. Though counsel for the petitioners has not raised this issue before the court as to whether statements recorded under Section 299 Cr.P.C. can form the basis for summoning an additional accused but it is an important legal issue, needs to be addressed in the present scenario.

Hon'ble the Supreme Court of India in *Hardeep Singh's case (supra)* while answering question No. III, “whether the word “evidence” used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word “evidence” is limited to the evidence recorded during trial?”, has held in paras 77 to 80, quoted thus:-

“77. It is, therefore, not any material that can be utilised, rather it is that material after cognizance is taken by a court, that is available to it while making an inquiry into or trying an offence, that the court can utilize or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the Court, who may be on the basis of such material, treated to be an accomplice in the commission of the offence. The inference that can be drawn is that material which is not exactly evidence recorded before the court, but is a material collected by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the accused.

78. This would harmonise such material with the word ‘evidence’ as material that would be supportive in nature to facilitate the exposition of any other accomplice whose complicity in the offence may have either been suppressed or escaped the notice of the court.

79. The word “evidence” therefore has to be understood in its

wider sense both at the stage of trial and, as discussed earlier, even at the stage of inquiry, as used under Section 319 Cr.P.C. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it. The duty and obligation of the court becomes more onerous to invoke such powers cautiously on such material after evidence has been led during trial.

80. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 Cr.P.C. The ‘evidence’ is thus, limited to the evidence recorded during trial.”

Perusal of the aforesaid extract leaves no manner of doubt that for the purpose of Section 319 Cr.P.C. only that evidence which has been adduced before the court during enquiry or trial can be looked into for the purpose of summoning a proposed accused.

The question that now calls for consideration is whether evidence recorded under Section 299 Cr.P.C. is covered within the scope of evidence adduced during enquiry or trial.

Rangoon High Court in *U Ba Hlaing vs. Balabux Sodani* 1937 Crl. LJ358 has held, reads thus:-

“Every enquiry or trial is a judicial proceeding, but every judicial proceeding under the Code is not an inquiry or trial. The Code contemplate proceedings which are neither an inquiry nor a trial, e.g., ss. 94, 95, 503, 506, 509, 511. The object of the provisions of s. 512 (1) is solely to record in a

particular way and under particular circumstances, depositions of witnesses which may in the future be used against the accused person when he is apprehended and brought to trial. The inquiry as to whether the accused person has absconded is only preliminary, and is held in order to bring the provisions of the sub-section into operation and to give the Court jurisdiction to record the depositions. Therefore proceedings under s. 512 (1) of the Code are judicial proceedings which are not an inquiry.”

This question came up for consideration before this court in *Davinder Kaur vs. State of Punjab 2002(2) RCR(Criminal)378* and it was held in para 8, quoted thus:-

“In the light of principles laid down in the above mentioned cases, the facts of the present case has to be adverted to in order to decide the controversy raised in this petition. It is apparent from the record that the Additional Chief Judicial Magistrate after taking cognizance had not chosen to issue any process to the petitioner-accused. Rather, at the first instance he proceeded to record evidence in terms of the requirement of Section 299 of the Code. Thereafter, statements of Ex-Capt. Puran Singh (PW-1) and Harbans Singh (PW-2) were recorded on 26.2.1998. It is thereafter the prosecution moved the application under Section 319 of the Code with a prayer to summon the petitioner-accused to face trial in respect of the offence under Section 420 Indian Penal Code. It cannot be disputed that proceedings taken under sub-section (1) of Section 299 of the Code though judicial proceedings, cannot be construed as inquiry or trial because the statements of the witnesses recorded can only be accepted in evidence in the eventuality where the witnesses, whose statements had been recorded were subsequently found dead or whose presence could not be procured. This limitation flows from the

provisions of Section 299 of the Code.”

Counsel for the complainant has failed to cite any law contrary to what has been held by this Court in *Davinder Kaur's case (supra)*.

Reverting to the case at hand, Gurjot Singh and others against whom challan was presented had already been declared as proclaimed offenders, therefore, no enquiry or trial was being conducted by the trial court. On the contrary, statements of witnesses were recorded under Section 299 Cr.P.C., to be used or accepted in evidence only in case they are subsequently found dead or their presence cannot be procured. In this view of the matter, I have no hesitation to hold that statements of Sarabjit Singh PW1 and Ranjit Singh PW2 recorded under Section 299 Cr.P.C. cannot be said to be evidence adduced during enquiry or trial envisaged under Section 319 Cr.P.C., therefore, those statements cannot form the basis for summoning the petitioners.

The trial court summoned the petitioners with the observations that active involvement and participation of the petitioners is established from statement of the complainant. There is no such finding recorded by the court that materials on record proves more than a prima facie case against the petitioners to satisfy the test required for summoning an additional accused, laid down in **Hardeep Singh's case (supra)**. Analyzed from any angle, I find merit in contention of the petitioners that the order impugned summoning the petitioners to face trial by invoking Section 319 Cr.P.C. cannot be allowed to sustain and liable to set aside.

For the foregoing reasons, the petition is partly allowed. Orders dated 11.6.2013 (Annexure P-6) and dated 16.5.2014 (Annexure P-

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7) are set aside leaving the parties to bear their own costs.

(Rekha Mittal)
Judge

17.5.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No