

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

**CRM-M No.31894 of 2015 (O&M)
Date of Decision: 25.05.2017**

**Divya SethiPetitioner
Vs
State of Punjab and another ...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vishavdeep Singh Rana, Advocate
for the petitioner.

Mr. P.S. Ghuman, Addl. A.G., Punjab.

Mr. G.S. Brar, Advocate
for the complainant/respondent No.2.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 24.04.2015 passed by Judicial Magistrate, Ist Class Patiala vide which she was summoned as an additional accused to face trial under Section 319 Cr.P.C.

[2]. Brief facts are that the FIR was registered by the complainant Manju Sethi wife of Sh. Rajesh Kumar, who is the *nanad* (sister-in-law) of the petitioner. Complaint was made to the police regarding cheating, fraudulently obtaining blank signed cheque book and blackmailing of the complainant. Complainant alleged that her father Kharaiti Lal had died in the year 1999. Thereafter his brothers namely Hanish Kumar @

Raju, Sumit Kumar @ Sonu and her mother Uma Devi @ Oma Devi had not given any share to the complainant and her sisters. Mother and brother Hanish Kumar @ Raju came to the in-laws house of the complainant and told her that she was having joint account with her father and sister Anju and there was some cash which was to be withdrawn. On that pretext, they got signatures of the complainant on blank cheque. They further told that after withdrawal of the amount, they will give due share to the complainant. They also obtained signatures of other sister of the complainant. Complainant further alleged that she signed the blank cheque in good faith. Thereafter brother and mother of the complainant went away. They withdrew the amount from the bank, but did not give share to the complainant and her sister. All the three sisters had filed a court case against the brothers. After few days elder brother and the mother of the complainant gave one cheque from the cheques signed by the complainant to one Manoj Kumar son of Hukam Chand by filling an amount of Rs.2 lacs and he filed a false case against the complainant. The complainant alleged that brother and mother of the complainant are in possession of more blank cheques which were allegedly got signed from the complainant. Allegation of cheating and blackmailing were made so as to pressurize the complainant to withdraw the court case. The

complainant also alleged that she has recorded the conversation of her mother on her mobile via video, in which her mother was accepting that she had cheated the complainant in connivance with her elder son Hanish Kumar @ Raju.

[3]. The police during course of investigation did not find any complicity of the petitioner. It was recorded that if, voice recorded in CD was correct, then Hanish Kumar, Uma Devi @ Oma Devi and Sumit Sethi @ Sonu had withdrawn the amount from the Bank by making the complainant to sign the blank cheques and one of the cheque was given to Manoj Kumar for which proceedings in terms of Section 138 of the Negotiable Instruments Act (for short 'the Act') were initiated. Offence under Sections 420, 468, 471 and 120-B IPC was found to have been committed and challan was accordingly presented against Sumit Sethi @ Sonu, Hanish Kumar @ Raju and Manoj Kumar.

[4]. Statement the complainant Manju Sethi was recorded as PW-1 wherein she stated that her mother told her that had the complainant not filed the civil suit against them, they would not have got filed the complaint on the basis of cheque. Manoj Kumar was not known to her. He is business partner of her brother Hanish Sethi @ Raju. Mother also admitted that she knew as a matter of fact that the complainant had not received any amount of Rs.2 lacs on which complaint under Section 138

of the Act was filed . When, mother was making the aforesaid conversation with the complainant, the complainant recorded the same via videography through her mobile phone.

[5]. So far as the complicity of the petitioner in the said statement is concerned, the complainant made the allegation to the effect that before the death of her mother, complainant and her sister Sunita met her mother at Karnal and the complainant asked her about the remaining cheques signed by her. In response thereto, mother told the complainant that the entire conspiracy of the cheque, misuse, fabrication thereafter was made by the elder sister-in-law of the complainant i.e. Divya Sethi.

[6]. The other witness namely Smt. Anju Chopra sister of the complainant while appearing as PW-2 stated that after the death of her father in the year 1999, no share was given to her or to her sisters out of the property of the father. In the year 2003-04, her brother Hanish Kumar @ Raju and mother obtained signatures of her sister Manju Sethi on various cheques under the pretext that the amount will be withdrawn and due share will be given to them. Thereafter, no amount was paid. In the year, 2007, she came to know that the forged Will had been prepared in respect of the property of the father. In respect of one of the cheque got signed from her sister Manju

an amount of Rs.2 lacs was filled and proceedings in terms of Section 138 of the Act were initiated by co-accused Manoj Kumar against her sister. The complaint was dismissed.

[7]. Husband of the complainant also appeared as PW-4. He has supplemented the stand of his wife i.e. complainant by saying that prior to the death of his mother-in-law, she disclosed in the presence of his wife Manju and sister-in-law Sunita that the cheques are lying with the petitioner. Similar statement was made by Sunita while appearing as PW-5.

[8]. Thereafter an application under Section 319 Cr.P.C. was filed for summoning the petitioner as an additional accused by alleging that one of the co-accused Sumit Sethi @ Sonu has orally confessed before the Court on 18.02.2014 during hearing of the case that remaining blank cheques signed by the complainant were in the custody of the petitioner and he assured to the Court that he can get the cheques recovered and he made further request to the Court to confess his guilt. Thereafter, he retracted from the said stand on the next date of hearing.

[9]. Trial Court vide the impugned order allowed the application on the premise that 4-5 days prior to the death of mother of the complainant, the complainant and her sister

Sunita went to Karnal where the mother of the complainant told them about the custody of the remaining blank cheques with the petitioner. The trial Court relied upon the testimonies of Rakesh Kumar husband of the complainant as PW-4 and Sunita as PW-5 to presume that the petitioner is in custody of those blank cheques. The testimonies of the witnesses disclosing the name of the petitioner in Court was taken to be an evidence sufficient for proceeding against the petitioner under Section 319 Cr.P.C.

[10]. Co-accused Sumit Sethi filed **CRM-M No.9572 of 2014** which was allowed by this Court vide order dated 02.12.2015, wherein it was held by this Court that the allegations in the FIR if, taken to be in its entirety does not constitute any offence against Sumit Sethi and FIR was ultimately quashed *qua* him. The operative part of the order reads as under:-

“In the instant case, a perusal of FIR would reveal that no role whatsoever had been given to the petitioner. The accusation revolves around her mother and brother, who had allegedly come to her and obtained her signatures on blank cheques. The FIR nowhere refers to the participation of petitioner in the crime. A perusal of reply dated 12.09.2008 (Annexure P-4) sent by the complainant to the legal notice issued by Manoj Kumar, a co-accused, would reveal that though the complainant alleged that the cheque was misused by Manoj Kumar in connivance with Uma Devi, Hanish Sethi and Sumit Sethi, but in the FIR lodged subsequently, the name of the petitioner was

conspicuously missing with no role assigned to him either as a conspirator or for actively participating in the crime. The allegations of conspiracy made by the complainant in her statement as PW1(Annexure P-6) against the petitioner are only an improvement. The complainant would have named the petitioner in the FIR if he was involved. Admittedly, the parties are having strained relation over the properties left by their father. The civil suit, for withdrawal of which the complainant was said to have been pressurized, was dismissed in default on 30.04.2011. The petitioner had been charged not only under Section 120-B IPC, but independently under Sections 420, 468 and 471 IPC even though no role had been given to him in the FIR. Though, much time had lapsed after framing of charges and some witnesses have been examined, but this Court in exercise of powers under Section 482 Cr.P.C. can interfere where continuation of proceeding against the petitioner would amount to sheer abuse of process of law.”

[11]. Perusal of the FIR shows that there is no such allegation against the petitioner, rather allegations are revolving around Hanish Kumar @ Raju, Sumit Sethi @ Sonu and mother of the complainant. No allegation has been made in respect of complicity of the petitioner at any point of time. While appearing as PW-1, the complainant only alleged that before the death of her mother, she along with her sister went to Karnal where her mother disclosed that the blank cheques are in custody of the petitioner and the petitioner was instrumental in making the conspiracy and fabrication of the cheques in question.

Apparently at the time of such disclosure by the mother of the complainant, the husband of the complainant was not present. The material collected by the Police during course of investigation was not considered *prima facie* material for framing charges against the petitioner. Now with the aforesaid improvement in the statements of PW-1 and PW-5, the petitioner has been summoned to face trial as an additional accused.

[12]. In **Hardeep Singh vs. State of Punjab and others, 2014(1) RCR (Crl.) 623**, the Hon'ble Apex Court summed up the conclusions and scope arising out of Section 319 Cr.P.C. The relevant conclusions summed up in para No.110, are reproduced as under:-

110. *We accordingly sum up our conclusions as follows:-*

Question Nos.I & III

Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND

Q.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?

A. In Dharam Pal's case, the Constitution

Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C., and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused. Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the charge-sheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No.II

Q.II Whether the word “evidence” used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the

examination-in-chief of the witness concerned?

A. *Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.*

Question No.IV

Q.IV *What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319(1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?*

A. *Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an*

accused will result in delay of the trial-therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No.V

Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

A. 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 can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh.

The matters be placed before the appropriate Bench for final disposal in accordance with law explained hereinabove.”

[13]. Degree of satisfaction required under Section 319 Cr.P.C., is much more higher than the *prima facie* satisfaction at the time of summoning. The test that has to be applied is one which is more than *prima facie* case as required at the time of framing of charge and just short of final conclusion. The scope of extent of powers of Court to summon any person as an accused during course of inquiry or trial in exercise of powers under Section 319 Cr.P.C., has been

set at rest by the aforesaid Hardeep Singh's case (supra). The legal position has been summarised in para Nos.98 and 99 of the aforesaid judgment. For ready reference para Nos.98 and 99 of the said judgment are reproduced hereunder:-

“98. Power under Section 319 Cr.P.C., is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

99. Thus, we hold 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 requires 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 Cr.P.C. In Section 319 Cr.P.C., the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words “for which such person could be tried together with the accused.” The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C., to form any opinion

as to the guilt of the accused.”

[14]. The powers of the trial Court under Section 319 Cr.P.C, are to be exercised on the basis of satisfaction that has to be arrived at on the basis of evidence led before it. Degree of satisfaction for invoking powers under Section 319 Cr.P.C., is the test of *prima facie* case having more degree of satisfaction than the one required for summoning the accused when cognizance is taken and process is issued. Though the test of *prima facie* case remains the same, but degree of satisfaction under Section 319 of Cr.P.C., is much higher than the degree of satisfaction required for summoning at the stage of taking cognizance and issuance of process. It is only the degree of satisfaction that distinguishes the concept of *prima facie* case in both the eventualities i.e. how the judgment of **Hardeep Singh's** case (supra) has been further highlighted in aforesaid context in **Babubhai Bhimabhai Bokhiria and anothers v. State of Gujarat and others, 2014(5) SCC 568**. Para No.8 of the said judgment reads as under:-

“8. Section 319 of the Code confers power on the trial Court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the Investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of *prima facie* case being made out is same as that when the

cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher.”

[15]. Apparently, the depositions made by the complainant during course of investigation was not found sufficient to even frame charge against the petitioner. With the improved statements that too on the basis of disclosure made by the mother soon before her death would not be sufficient to presume existence of more than *prima facie* case for summoning the petitioner under Section 319 Cr.P.C. The degree of satisfaction required for summoning at this stage has to be based upon material to be sufficient to create reasonable prospects of conviction of the petitioner. The exclusion of the petitioner from array of the accused in the FIR cannot presume to be an erroneous statement of fact as the statement was so categorical that accusation was made against the brothers of the complainant as well as against the mother. The evidence led before the trial Court is on account of improvement made in the statement that too on the basis of hearsay from the mother that the signed cheques are in possession of the petitioner and the petitioner was instrumental in harassing the complainant.

[16]. The statement of fact given in the FIR is conspicuously silent with regard to the number of cheques allegedly signed by

the complainant and were handed over to the brother and mother of the complainant. It appears that after the death of father in the year 1999, there was dispute between the sister at one side and the brothers on the other side. Even a civil suit was filed by the complainant and her sisters in respect of share in the property. In the complaint filed under Section 138 of the Act Manoj Kumar, complainant has been acquitted.

[17]. In view of facts and circumstances of the case, I am of the view that the material on record cannot be treated to be more than *prima facie* case for summoning of the petitioner as an additional accused under Section 319 Cr.P.C. The parameters laid down in Hardeep Singh and Babubhai Bhimabhai Bokhiria and anothers' cases (supra) if, applied to the given situation would negate the summoning of the petitioner as an additional accused under Section 319 Cr.P.C. Consequently, the impugned order dated 24.04.2015 is hereby set aside. The trial Court shall proceed in respect of original accused.

[18]. Petition stands disposed of accordingly.

May 25, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No