

115 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-42525-2016 (O&M)

Date of decision-20.01.2017

Yoginder Kumar

...Applicant-Petitioner(s)

Vs.

State of Punjab

...Respondent

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. B.B.Bagga, Advocate for the applicant-petitioner(s).

JITENDRA CHAUHAN, J. (Oral)

CRM-39685-2016

Application is allowed as prayed for.

Annexure P-24 is taken on record subject to all just exceptions.

CRM-1268-2017

Application is allowed as prayed for.

Annexure P-25 is taken on record subject to all just exceptions.

CRM-M-42525-2016

This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing the impugned order dated 01.10.2016 passed by the learned Additional Sessions Judge, Mohali as well as impugned order dated 01.07.2016 (Annexure P-22) of Judicial Magistrate First Class, Derabassi, whereby the petitioner was ordered to be summoned under Section 319 Cr.P.C. in FIR No.161 dated 23.04.2013 at Police Station

Zirakpur as an additional accused to face trial under Sections 420 and 120-B of Indian Penal Code.

Learned counsel contends that the petitioner has been falsely roped in the present FIR being the maternal grandfather of co-accused, namely, Aditya Kumar. He is neither signatory to any document nor has he raised any loan. Moreover, he was not even guarantor of any loan. The only reference in the statement recorded in the deposition of the complainant that the petitioner allegedly opened the door of the house and the keys were handed over by him to the complainant, which the learned counsel for petitioner asserts, are against record. However, the petitioner is more than 80 years of age and suffering from various ailments as reflected in Annexure P-1.

Notice of motion.

At the asking of the Court, Ms. Harsimrat Rai, DAG, Punjab. Punjab, accepts notice on behalf of the respondent-State. A complete copy of the paper book has been furnished to the learned State counsel, in the Court.

The controversy regarding summoning under Section 319 Cr.P.C. has been settled by Hon'ble the Apex Court in '**(2014) 3 SCC 92, Hardeep Singh Vs. State of Punjab and others**'. Their Lordships have held as under:-

“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

unrebutted, 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."

In the instant case, complainant, namely, Neelam Rani has specifically named the petitioner as one of the accused who cheated her. The petitioners alongwith his son Aditya Kumar and property dealer R.D.Kharbanda, both co-accused, had taken the complainant to Union Bank of India and appraised her of the outstanding loan amount of Rs.12.80 lakh against the property in questions.

Considering the above, this Court feels that evidence on record is sufficient to summon the accused under Section 319 Cr.P.C. and no case for setting aside the orders dated 01.07.2016 and 01.10.2016 is made out. However, keeping in view the age and the physical health of the petitioner, he shall be exempted from causing personal appearance before the trial Court on his filing an affidavit to the effect that he has no objection, if evidence is recorded in his absence and he will make himself available to the Court as and when required.

Disposed of.

January 20, 2017

vanita

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No