

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

CRM-M-42794-2017

Date of decision:-11.12.2017

Suresh Kumar

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Present: Mr.P.S. Dhaliwal, Advocate
for the petitioner.

H.S. MADAAN, J.

This petition under Section 482 Cr.P.C. for quashing of order dated 11.9.2017 passed by learned Additional Sessions Judge, Barnala vide which he had set aside order dated 8.6.2015 passed by Judicial Magistrate Ist Class, Barnala dismissing application under Section 319 Cr.P.C. has been filed by petitioner Suresh Kumar, who though named as a culprit in FIR No.02 dated 3.1.2011, under Sections 384, 406, 420, 467, 468, 471, 120-B IPC registered with Police Station City, Barnala had not

been challaned by the police.

Briefly stated, facts of the case as per prosecution version are that the complainants Gurmit Singh and his mother Mohinder Kaur had submitted a written complaint to Senior Superintendent of Police, Barnala dated 20.11.2010 contending therein that complainant Mohinder Kaur had borrowed a sum of Rs.1 lakh from Madan Lal, M.C., resident of Street No.5, Shekhan Road, Barnala and Suresh Kumar, who also having residence there and at the time of giving money, both the accused in connivance with each other had taken signatures of Mohinder Kaur on blank cheque and pronote and thereafter they started harassing the complainants, that a Panchayati compromise had taken place between the parties in terms of which, the complainants had given a sum of Rs.1,35,000/- to the accused, who had returned the blank cheque but not returned the blank pronote; that they filled in Rs.1 lakh in the blank pronote and started blackmailing the complainants.

This complaint formed basis for registration of formal FIR. The matter was investigated. Accused Madan Lal was arrested in this case. After completion of investigation Madan Lal was sent up to face trial whereas it was not so as regards Suresh Kumar and his name was placed in column No.2 of the final report under Section 173 Cr.P.C.

During the trial before Judicial Magistrate Ist Class, Barnala, an application under Section 319 Cr.P.C. was filed for summoning of Suresh Kumar as an additional accused to face trial along with Madan Lal but that application was dismissed by the trial Court vide order dated 8.6.2015.

Feeling aggrieved, the complainant had filed a revision petition, which was accepted by learned Additional Sessions Judge, Barnala vide judgment dated 11.9.2017, resultantly, the impugned order was set aside and the trial Magistrate was directed to pass fresh order on application under Section 319 Cr.P.C. in light of observation made in the judgment.

The judgment left the accused Suresh Kumar aggrieved and he has approached this Court by way of filing the present petition.

I have heard learned counsel for the petitioner besides going through the case file and I find that there is no illegality or infirmity in the judgment passed by learned Additional Sessions Judge, Barnala. It has been passed keeping in view the settled principles of criminal law and the landmark judgment by the Apex Court on the topic i.e. **Hardeep Singh Versus State of Punjab & Ors, 2014(1) R.C.R.(Criminal) 623**. The reasoning given is contained in paras No.13 to 16 which is as follows:

The impugned order may be examined on the touchstone of aforesaid adumbrated principles. Perusal of record indicate that the FIR was registered on the application submitted by complainant Mohinder Kaur to the SSP Barnala against Madan Lal and Suresh Kumar, interalia, alleging that they have been black mailing her. At the out-set it is worthwhile to state that the FIR is not the encyclopedia of the case of the prosecution. The Senior Superintendent of Police, Barnala marked the inquiry on the aforesaid application dated 20.11.2010 to D.S.P. Barnala, who submitted his inquiry

report, on the basis of which instant FIR was registered against Madan Lal, Lakhbir Singh and Bhim Sain. After framing of charge, prosecution examined Mohinder Kaur complainant as PW1. In her testimony in the Court, she states that she obtained a sum of Rs.50,000/- on 28.4.2009 and another sum of Rs.50,000/- on 18.12.2009 from Suresh Kumar through Madan Lal and in this regard both of them obtained her signatures on three blank cheques bearing No.027691, 027692 and 027963 of Punjab & Sind Bank, Barnala, and they also obtained signatures on blank stamp papers as security from her. She further states that on account of dispute regarding repayment of loan amount between her and Suresh Kumar, she filed an application before the SHO, Police Station City, Barnala, in which a compromise was effected on 9.5.2010 and she returned the amount of Rs.1,35,000/- to Suresh Kumar and in this regard written compromise Ex.PW1/A was executed. She further states that accused Madan Lal destroyed three blank cheques and documents, but he fraudulently kept the stamp paper bearing her signatures with him, on which he in connivance with Suresh Kumar got scribed an agreement to sell dated 1.4.2010 for the sale of her house and the said agreement was witnessed by Lakhvir Singh and Bhim Sain, who are the close friends of Madan Lal. She proved her complaint as Ex.PA.

In so far as Suresh Kumar is concerned, sufficient evidence came on record to summon him as an additional accused and the learned trial Court erred in dismissing the application. It has come in the testimony of complainant Mohinder Kaur PW1 that the entire loan transaction took place between her and Suresh Kumar. She handed over blank cheques and signed papers to Suresh Kumar. She handed over blank cheques and signed papers to Suresh Kumar. It was assured to her at the time of compromise Ex.PW1/A that the aforesaid papers would be destroyed. In deference to the terms of the aforesaid compromise, he paid a sum of Rs.1,35,000/- to Suresh Kumar and in her presence some of the papers were destroyed. However, Suresh Kumar and Madan Lal fraudulently and dishonestly retained the stamp papers signed by her with them. The prosecution also examined Darshan Kumar, Stamp Vendor at Tehsil Office Barnala as PW2 who stated that Mohinder Kaur had purchased stamp papers on 28.4.2009 bearing entry No.77701. He also proved the copy of his register pertaining to the aforesaid entry as Ex. PW2/A. It further transpires from the record that on the aforesaid stamp paper the alleged agreement to sell was scribed with regard to the sale of the house of the complainant in favour of accused Madan Lal. The very fact that the stamp papers, which was obtained by Suresh Kumar as security from complainant Mohinder Kaur,

passed on to Madan Lal prima-facie indicates the criminal conspiracy between Suresh Kumar and Madan Lal. Learned APP for the State has drawn attention of this Court to statement of Suresh Kumar under Section 161 Cr.P.C. Wherein it is recorded that he handed over the papers to Madan Lal who had misused the same. Even though at the stage of Section 319 Cr.P.C., the aforesaid statement is not material as the evidence recorded after framing of the charge is to be looked into and thus the same has to be eschewed from consideration. However, be that as it may, the evidence brought on record after framing of charge prima facie indicates the existence of criminal conspiracy between Suresh Kumar and Madan Lal and thus he is liable to be prosecuted alongwith other co-accused.

The learned trial Court has committed a fundamental error by placing strenuous reliance upon the initial complaint submitted by the complainant to the police while dismissing the application under Section 319 Cr.P.C. Oblivious of the fact that the FIR registered on the initial complaint of complainant could not be the encyclopedia of the case of the prosecution. Since the case of the prosecution is that the complainant was being black mailed by the accused and thus she moved an application. It was only during the course of preliminary inquiry conducted by DSP, Barnala and followed by investigation on registration of the

FIR that new facts came to light resulting into exposure of forgery and the fraud committed by the accused.

The contention of the learned counsel for the respondent that he has also been cited as a witness by the prosecution and thus cannot be summoned as an accused, is fallacious in view of the judgments in case “Kartar Singh Vs. State of Punjab, 2008(1) R.C.R.(Criminal) 592”, “Lajpat Rai Vs. State of Haryana, 2002(1) R.C.R.(Criminal), 280 & “J.Prabhavathaiamma Vs. State of Kerala, 2008 (1) R.C.R.(Criminal), 778 holding that there is no interdict for summoning a witness of the prosecution as an additional accused under Section 319 Cr.P.C. if the parameters indicated therein are satisfied.

PW1 Mohinder Kaur PW1 categorically stated that entire loan transaction took place between her and Suresh Kumar; that she had handed over blank cheques and signed papers to Suresh Kumar. It was assured to her at the time of compromise Ex.PW1/A that the aforesaid papers would be destroyed for that she had paid a sum of Rs.1,35,000/-. However, Suresh Kumar and Madan Lal fraudulently and dishonestly retained the stamp paper signed by her. Her statement being corroborated by PW2 Darshan Kumar from record. Sufficient reasons were there to come to the conclusion that the application under Section 319 Cr.P.C. had merit. For the said reason, the revision petition has been accepted, impugned order was set aside and directions issued to the trial Court to

pass fresh order on application in light of observations made in the judgment.

I do not find any fault with the order passed, rather the petition is without any merit and is dismissed accordingly.

11.12.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No