

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

**CRM-M-6019-2014 (O&M)
Date of decision: - 4.10.2017**

Maan Singh

.....Petitioner

versus

State of Haryana and ors

.....Respondents

CORAM: - HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: - Mr. G.C. Shahpuri, Advocate for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. Ravinder Malik, Advocate for
Mr. J.S. Chahal, Advocate
for respondents No. 2, 4, 5 and 6.

ARVIND SINGH SANGWAN, J (ORAL)

Prayer in the present petition is for quashing of the impugned order dated 4.10.2013 (Annexure P-4) passed by JMIC Bilaspur, District Yamunanagar whereby an application filed by the petitioner under Section 319 Cr. P.C. for summoning the additional accused-respondent No. 2 to 9 was dismissed and the order dated 23.1.2014 (Annexure P-6) vide which the revisional Court dismissed the revision petition filed by the petitioner.

At the time of issuance of notice of motion on 10.3.2014, petitioner had withdrawn the present petition qua respondents No. 3 and 7 to 13; notice of motion was issued only qua respondents No. 1, 2 and 4 to 6 and trial Court was directed not to pass the final judgment.

Learned counsel for the petitioner submits that he has submitted a complaint against the accused Jai Pal along with 11 other persons who are arrayed as respondents No. 2 to 9 with the allegation that accused No. 1-Jai Pal

has entered into an agreement to sell regarding his land measuring 26 kanal 3 marlas with the complainant-Maan Singh and his brother-Jagir Singh on 1.10.2004. However, Jai Pal refused to get the sale deed executed on the stipulated date and in stead setup another agreement to sell dated 15.6.2004 in favour of Subhash & Balkar and in conspiracy with other accused persons who were the stamp vendors and attesting witnesses to this agreement to sell. After the registration of the FIR, police submitted a report under Section 173 Cr. P.C., only against the accused Jai Pal who is stated to have died on 26.10.2015. Thereafter, when the prosecution evidence started petitioner appeared himself as PW-1 and deposed on the same lines as per his version given in the FIR vide his statement dated 6.7.2011 Annexure P-2. Later on, on the basis of the statement of the petitioner-complainant, he moved an application under Section 319 Cr. P.C for summoning all the accused persons as additional accused. The application filed by the petitioner-complainant was dismissed by the trial Court vide its order dated 4.10.2013 observing as under: -

“5. After going through the evidence place on record, there is no cogent evidence against the persons named above sought to be summoned as additional accused. Hon'ble Apex Court in case titled Mohd. Shafi versus Mohd. Rafiq and another 2007 (2) RCR (Criminal), 763, has held that the Court cannot summon the person on the basis of examination-in-chief of PW. In this present case no new evidence has come which can show any allegation against aforesaid persons. The police has removed their name after thorough investigation. The legal position regarding summoning additional accused to face the trial under Section 319 Cr. P.C. is well settled. The basic requirement for invoking this section, as held by the Hon'ble Supreme Court of India in case titled Micheal Machado and another vs. Central Bureau of Investigation and another, 2000 (2) RCR (Criminal)-75 (SC) is that it should appear to the court from the evidence collected during the trial or in inquiry that summon other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that court

entertained some doubt from the evidence about the involvement of another person in the offence. In the case in hand, no convincing evidence has come on record against the persons named above sought to be summoned as an additional accused and it appear that purpose of filing the present application is to drag them unnecessarily into criminal litigation.

6. In view of the discussion made above this Court has no justification to summon the above named persons as an additional accused under Section 319 Cr. P.C. Therefore, the present application stands dismissed”.

Thereafter, petitioner preferred a revision before the revisional Court. In that revision petition, only the State of Haryana was arrayed as respondent and respondents No. 2 to 13, (respondents herein) were not impleaded as party. The revisional Court, dismissed the revision filed by the petitioner holding that no convincing evidence has come on record against the persons who are sought to be summoned as an additional accused under Section 319 Cr. P.C and therefore, the trial Court has rightly dismissed the application. The operative part of the order of the revisional Court reads as under: -

“As emerges from the case of revisionist/complainant, it is case of revisionist/complainant that accused no. 1 Jai Pal entered into agreement to sell dated 01.10.2004 with complainant Mann Singh, his brother Jagir and he received earnest money of Rs. 4,00,000/- from the complainant and his brother Jagir Singh.

The initial complaint Ex. PW1/A also gone through carefully. As per initial complaint Ex. PW1/A made by complainant Maan Singh upon which formal FIR No. 47 dated 25.03.2008, under sections 420, 406 IPC, PS Sadhaura was registered, duly reveals that accused no. 1 Jai Pal in collusion with remaining accused prepared two false agreements dated 01.09.2004 and 15.06.2004.

Admittedly, after registration of FIR, investigation taken place and accused no. 1 Jai Pal only was challaned by the police and his case was forwarded to the learned trial court and on 15.03.2010 accused Jai Pal was charge sheeted and thereafter, prosecution case initiated for prosecution evidence. Complainant Maan Singh duly stepped into witness box as PW1 and on the basis of his testimony, application under

Section 319 Cr.P.C for summoning of remaining accused filed on behalf of present revisionist/complainant and that application was duly dismissed by the court of Ms. Rekha Chaudhary, learned JMIC, Bilaspur vide order dated 04.10.2013. Order dated 04.10.2013 duly reveals that application under section 319 Cr.P.C dismissed on the ground that no convincing evidence has come on record against the persons whose name mentioned in the application under section 319 Cr.P.C., so, there is no justification to summon those persons as additional accused under section 319 Cr.P.C.

Admittedly, as per section 319 Cr.P.C., trial court is empowered to proceed against other persons appearing to be guilty of offence. It is settled law that by merely mentioning of names of person in initial complaint and attributing the name of any person at the time of evidence, is not sufficient to summon those persons on the wishes of complainant. The complainant has to justify the summoning of those persons who have not been challaned by the police. The entire allegation as leveled by complainant in his initial complaint is against Jai Pal, who entered into agreement to sell with the complainant and his brother Jagir Singh on 01.10.2004. It is accused no. 1 Jai Pal who is concerned with the agreement to sell dated 01.10.2004 and remaining accused have no concern what so ever it is with the alleged agreement of complainant Maan Singh dated 01.10.2004.

If otherwise, any other agreement to sell such as dated 01.09.2004, 15.06.2004 taken place in between accused no. 1 to 13 then it is accused no. 1 Jai Pal who has right to challenge those agreements to sell being null and void.

A civil suit for possession by way of specific performance of agreement to sell, on the basis of alleged agreement to sell dated 01.10.2004 already decreed in favour of present complainant Maan Singh. There is no finding of any civil court that agreement to sell dated 01.09.2004 and 15.06.2004 are actually forged and fabricated documents. The controversy in between the complainant and accused Jai Pal related to one agreement to sell dated 01.10.2004 which is of civil nature.

Keeping in view all the circumstances of the case this court reached at a considered opinion that learned trial court vide order dated 04.10.2013 rightly dismissed the application under section 319 Cr.P.C. There is no illegality in the order dated 04.10.2013 passed by learned trial court, so, no ground is made out to interfere in the finding of learned trial court. Hence, the present revision petition is dismissed. The impugned order is upheld. Trial court record along with a copy of this

judgment be sent back. Revision file be consigned to record room after due compliance.”

Learned counsel for the petitioner has submitted that in fact in the civil suit filed by the petitioner and his brother against Jai Pal and in another suit filed by Subhash Chand and Balkar Singh against Jai Pal on the basis of their respective agreement to sell, the civil Court has granted a decree of specific performance in favour of the petitioner and his brother whereas dismissed the suit filed by Subhash Chand and Balkar Singh. It is thus submitted that since the civil Court has discarded the agreement to sell dated 1.10.2004 and has decreed the agreement to sell dated 15.6.2004, the evidence has come on record to prove the same. Both the Courts below have wrongly declined to summon respondents No. 2 to 13 as an additional accused. It is also submitted that he has specifically named all the accused persons in the FIR as well as in the statement recorded by him while appearing as PW-1.

On the other hand, learned State counsel as well as learned counsel appearing for private respondents has opposed the prayer of the petitioner.

After hearing learned counsel for the parties, I find no merit in the present petition. Admittedly, at the stage of filing the application under Section 319 Cr. P.C. by the petitioner, the only evidence available before the trial Court was the report under Section 173 Cr. P.C. along with the statement of the complainant as well as the statement of the petitioner as PW-1.

Hon'ble Supreme Court in 2017 (3) RCR (Criminal) 375, Brijendra Singh and ors vs. State of Rajasthan has held that where the evidence recorded during the trial is nothing more than the statement which was already there under Section 161 Cr. P.C. recorded at the time of investigation of the case, trial court while forming a prima facie opinion has to see whether much stronger evidence

than the mere possibility of their (proposed accused), complicity has come on

record. Both the Courts below have concurrently held that there is no evidence on record led by the petitioner on the basis of which respondents No. 2 to 9 could have been summoned under Section 319 Cr. P.C.

In view of above, finding no merit in the present petition, the same is dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

4.10.2017
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Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No