

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

**CRM No.M-9978 of 2016 (O&M)
Date of Decision: August 21, 2017**

Sarbhjit Singh

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Manjot Singh Tiwana, Advocate
for the petitioner.

Mr.Gaurav Garg Dhuriwala, Sr.DAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against respondent State of Punjab for quashing the order dated 14.08.2015 passed under Section 319 Cr.P.C. by learned Addl. Sessions Judge, Mansa, vide which the trial Court had summoned him to appear in the Court and to face trial with the other co-accused.

Notice of motion was issued. Learned State counsel appeared on behalf of the respondent-State.

Learned counsel for the petitioner argued that no evidence was recorded by the Court of Session. The application under Section 319 Cr.P.C. was allowed by learned Addl. Sessions Judge, Mansa without recording any evidence. He argued that Court of Session summoned the petitioner as additional accused on the basis of the evidence recorded by learned Magistrate. He further argued that when the case is committed, then

learned Addl. Sessions Judge is to record the evidence and then only

application under Section 319 Cr.P.C. can be allowed. Learned counsel for the petitioner also contended that no evidence has been recorded before the Court of Session, therefore, learned Addl. Sessions Judge, Mansa, has committed illegality while summoning the present petitioner under Section 319 Cr.P.C. vide impugned order dated 14.08.2015.

Learned State counsel did not contest the arguments addressed by learned counsel for the petitioner.

I have heard learned counsel for the petitioner as well as learned State counsel and have gone through the record.

In the present case, a report was called from learned trial court, which shows that learned Addl. Sessions Judge, Mansa, without recording the evidence, summoned the present petitioner Sarabhjit Singh. The accused cannot be summoned under Section 319 Cr.P.C. without recording the evidence. The accused is to be summoned when any evidence comes against him and the Court feels that it appears from the evidence that additional accused is also involved in the commission of the offence. As learned Addl. Sessions Judge, Mansa, has not recorded any evidence, therefore, accused-petitioner cannot be summoned under Section 319 Cr.P.C. The Court of Session after commitment of the case, cannot summon the accused on the basis of the evidence recorded by the Magistrate.

In view of the above discussion, I find merit in the present petition and the same is allowed. The impugned order dated 14.08.2015 passed by learned Addl. Sessions Judge, Mansa, is set aside.

August 21, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No