

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-2727-2014 (O&M)
CRR-2772-2014 (O&M) and
CRR-493-2014 (O&M)
Date of decision: August 22, 2017.

Charanjit Singh Meelu
Charanjit Singh Meelu
Virender Kumar and others

... **Petitioners**

v.

State of Punjab

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri Atul Lakhanpal, Senior Advocate with
Shri Arjun Lakhanpal, Advocate for the petitioner(s)
in CRR-2727-2014 & CRR-2772-2014.
Shri Kanwaljit Singh, Senior Advocate with
Shri Abhishek Bajaj, Advocate for the petitioner in
CRR-493-2014.
Ms. Samina Dhir, Deputy Advocate General, Punjab.

A.B. Chaudhari, J.

These three revision petitions are being disposed of by this
common order.

In CRR-2727-2014, the petitioner Charanjit Singh Meelu has
put to challenge the order dated 7.5.2014 passed by Special Judge, SAS
Nagar, Mohali framing charge against the present petitioner Charanjit Singh
Meelu. CRR-2772-2014 was filed by Charanjit Singh Meelu against the
order dated 27.11.2013 passed by Special Judge, SAS Nagar, Mohali
summoning him as an additional accused in exercise of power under Section
319 Cr.P.C. in S.C. No. RT-14/6.5.03/26.5.09. CRR-493-2014 was filed by
Virender Kumar, Mohinder Singh Karir, Tej Ram Goyal and Amarjit Singh
against the order dated 27.11.2013.

The fate of CRR-2727-2014 would depend upon the fate of other two revision petitions.

FACTS:-

FIR No.12 dated 14.6.2002, under Sections 420, 467, 468, 471, 120-B IPC and Sections 13(1)(D) read with Section 13(2) of the Prevention of Corruption Act, 1988, Police Station Vigilance Bureau, FS-I, Mohali was registered and the then Education Minister, Tota Singh etc. were sent up for trial. The prosecution allegations are that the Education Minister Tota Singh had got done bungling in recruitment of Clerks in the PSEB in connivance with the officials of the PSEB. He got those candidates selected who had failed in the typing test and their earlier record was destroyed and their type test was taken again. The other allegations made against him were regarding misdeeds in the Education Department and amassing of wealth disproportionate to his known sources of income. On the basis of these allegations the formal FIR was got registered and investigation was conducted. According to the prosecution, it was found that in May, 1998 an advertisement was issued for recruitment of 134 Clerks in the PSEB for which examination was started in the year 2001 and 134 Clerks were recruited in the year 2002. After screening (written test), type test was to be conducted. Dr. Kehar Singh, Chairman of PSEB constituted a committee vide order dated 21.12.2000 comprising of convener Amar Singh Secretary, Mohinder Singh Karir Assistant Secretary and Varinder Kumar, Assistant Secretary to Chairman. After holding of the type test, the answer sheets were put in sealed packets signed by all the three members and were sent to the examiners for marking. Om Parkash PA to Director (Academics) and Harpal Singh PA to Joint Secretary made statements that seals of the

packets containing answer sheets were broken; packets were opened and some answer sheets were suspicious; some of which appeared to be typed by using the same typewriter and there were some other discrepancies also. There were many other allegations in the prosecution case and finally, the trial started.

During trial, Om Parkash PW16 was examined before the trial court who deposed before the trial court in detail. Om Parkash, the witness (PW16) then filed an application purported to be under Section 319 Cr.P.C. before the trial court for summoning the additional accused persons, namely, all the present petitioners in these petitions. The trial court passed the impugned order and exercised the power under Section 319 Cr.P.C. for summoning the petitioners as additional accused in the trial. Hence, these petitions putting challenge to the said order.

ARGUMENTS:

In support of the petitions, Learned Counsel for the petitioners vehemently argued that the trial against the Education Minister Tota Singh and others has almost come to an end after recording of evidence and at such a late stage, it was not permissible for the trial court to exercise power under Section 319 Cr.P.C. for summoning the additional accused, i.e., the petitioners. Learned Counsel for the petitioners invited my attention to the evidence of Om Parkash PW16 which runs into number of pages and contended that even if his evidence is taken into consideration, the trial court, by no stretch of imagination could have passed the impugned order. The evidence of Om Parkash PW16 nowhere discloses any material against the petitioners so that they could be summoned in exercise of power under Section 319 Cr.P.C. There is absolutely no material anywhere against all

these petitioners. According to Learned Counsel for the petitioners, it is well settled that by mere putting the name in the evidence, the power under Section 319 Cr.P.C. cannot be exercised in the absence of specific evidence and therefore, they submitted that order impugned is required to be quashed and set aside.

Per contra, Learned Counsel for the State opposed the petitions and submitted that since the trial has started, this Court need not interfere with the impugned order summoning the accused. The petitioners can well be acquitted if there is no evidence against them, as contended by them, but it is not legal and proper to interfere with the order summoning the accused. Learned Counsel for the State, therefore, prayed for dismissal of the petitions.

CONSIDERATIONS:-

I have considered the rival submissions made by learned counsel for the rival parties at length. This Court had on 8.8.2016, after hearing the parties, pronounced the order by allowing the petitions. However, at the time of giving reasons, this Court felt it necessary to re-hear the matter and accordingly these were fixed for re-hearing on 22.8.2017. Accordingly, arguments of the petitioners were re-heard and again order was pronounced in open Court allowing all these petitions. The following are the reasons for allowing the petitions.

The Constitution Bench judgment of the Supreme Court in the case of Hardeep Singh v/s State of Punjab, 2014(1) RCR (Crl.) 623, in the matter of Section 319 Cr.P.C. laying down the principles for summoning additional accused would be most relevant. The tests laid down by the Apex Court in the said judgment find mention in paragraphs 98, 99 and 100,

which are quoted 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 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.

Q.(v) In what situations can the power under this section be exercised: Not named in FIR; Named in the FIR but not charge-sheeted or has been discharged?

100. In *Joginder Singh & Anr. v. State of Punjab & Anr.*, AIR 1979 SC 339, a three-Judge Bench of this Court held that as regards the

contention that the phrase “any person not being the accused” occurring in Section 319 Cr.P.C. excludes from its operation an accused who has been released by the police under Section 169 Cr.P.C. and has been shown in Column 2 of the charge-sheet, the contention has merely to be rejected. The said expression clearly covers any person who is not being tried already by the Court and the very purpose of enacting such a provision like Section 319 (1) Cr.P.C. clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the criminal court, are included in the said expression.”

Looked at the present impugned order in the light of the aforesaid Constitution Bench judgment, I find that the evidence of Om Parkash PW16 qua the present petitioners does not show any complicity of the present petitioners so as to summon them as additional accused by exercising power under Section 319 Cr.P.C. His lengthy evidence has been seen by me but I do not find any material against the present petitioners in his evidence for summoning the present petitioners as accused persons.

It is significant to note that all the above petitioners were cited as prosecution witnesses against Tota Singh and others and they were found innocent during investigation.

The trial court has, however, given the reasons which I quote hereunder for summoning the petitioners as accused persons:-

13. PW16 Om Parkash applicant when appeared in the witness box made statement proving the above said facts as narrated in the application to the effect that type test for selection of clerks was conducted from December, 2000 to January, 2001 and for the purpose of evaluation three packets of answer sheets of

type test were given to him by Amar Singh Private Secretary to Vice Chairman Dr. Gurdev Singh. Number of answer sheets of each packet was varying and the said packets were loose and were not in sealed condition. The said packets of Batch No.2, 4 and 15 there were 72 answer sheets in packet in batch No.4. Ex. PW16/A is order passed by Amar Singh, Convener of Type Test Committee comprising names of the evaluators. After checking the answer sheets, the same were returned to Amar Singh. Thereafter, two packets of batch No.4 and 15 were delivered to him. There were 72 answer sheets in packet No.4 and 37 answer sheets in packet of batch No.15. He found abnormalities/irregularities in the answer sheets of different roll numbers, regarding which he informed Dr. Kehar Singh Singh by making phone call and told him that answer sheets of some of the candidates are not genuine. Upon directions of Dr. Kehar Singh, he went to Patiala to show him the answer sheets on 9.6.2001. But Dr. Kehar Singh advised him that after evaluating the answer sheets the same be returned to Amar Singh. Accordingly, he returned the answer sheets to Amar Singh. Thereafter, he again met Dr. Kehar Singh and upon his advise he retained Photostat copies of the answer sheets of entire batch No.4 and 15. He prepared a report also and he had put his initials on original answer sheets Ex.PW16/E there were two questions papers of batch Nos.12 and 15, which were bearing signatures of Mohimder Singh Karir, Committee member. Type test of batch No.12 was conducted prior to type

test of batch No.15. Hence, there was no question of putting question papers of batch Nos.12 and 15 in packet of answer sheets of batch No.12. He also initialed answer sheets Ex.PW16/M to Ex.PW16/U. These were taken in possession by the Investigating Officer, vide Memo Ex.PW15/G. ...

... He further gave names of the candidates, who are related to the officials of the P.S.E.B. That selection for the posts of Clerks to be made by Junior Selection Committee constituted by Chairman of P.S.E.B. every year. Secretary of the P.S.E.B. is Ex-officio member and Chairman of Junior Selection Committee. Jagjit Singh Sidhu was the then Secretary and Chairman of the said Committee constituted vide order dated 24.4.2001 Ex.PA/169. Other members of the Committee were Pavittar Pal Kaur Deputy Director, Col. Zora Singh and Tirath Singh. The entire process was to be undertaken by them. However, Dr. Kehar Singh Chairman constituted a separate type test committee comprising of Gurdev Singh Vice Chairman as head, Amar Singh Private Secretary to Vice Chairman/Convener and Varinder Kumar Assistant Secretary of Chairman and Mohinder Singh Deputy Secretary, as members. First of all, written test was conducted and then type test of qualified candidates was conducted. Thereafter, interview was conducted. The entire process was to be undertaken by the Junior Selection Committee, but the written type test was conducted by the Controller of examination; type test was conducted by Type Test Committee and only interview

was conducted by Junior Selection Committee.

14. ... The Chairman of P.S.E.B. got opened the sealed cover through five members namely Amarjit Singh Multani, Raminder Singh Assistant Secretary, Varinder Kumar Assistant Secretary, Charanjit Singh Meelu Incharge Administration and fifth member Yodha Mal Puri Deputy Secretary was on tour, who did not sign the proceedings. That merit list of the selected candidates came to them later on. Amarjit Singh Multani gave computerized list of selected candidates. He alongwith Satish Kumar were custodian of the record."

15. Perusal of this above discussed evidence led by the prosecution shows that a Junior Selection Committee for selection of clerk comprising of Jagjit Singh Sidhu Secretary as Chairman, Pavitter Pal Kaur Deputy Director, Tirath Singh and retired Col. Zora Singh was constituted there in the P.S.E.B., vide order dated 21.12.2000 of Dr. Kehar Singh Chairman. However, after issuance of advertisement for selection of 134 clerks, firstly a written screening test was conducted and thereafter a type test committee comprising of Amar Singh Private Secretary of Vice Chairman as Convener, Mohimder Singh Karir and Varinder Kaur as members was constituted, which conducted the type test. Further, re-type test of 62 candidates was ordered to be conducted by Dr. Kehar Singh, Chairman of the P.S.E.B. Out of 51 candidates appeared in the re-type test, 50 candidates were declared successful and then 13 out of them were finally selected. Interviews were

conducted by the above said Junior Selection Committee. The award lists prepared by them were sent to Dr. Kehar Singh Chairman in sealed envelope, which were got opened by him through a committee comprising of Amarjit Singh Multani, Raminder Singh, Varinder Kumar and Charanjit Singh Meelu. At that time Tej Ram Goel was Special Secretary to Dr. Kehar Singh, Chairman, whose daughter and nephew were got selected. PW16 Om Parkash had evaluated answer sheets of the typing test and found several irregularities/illegalities therein, which he brought to the notice of Dr. Kehar Singh, Chairman, who also obtained a report from PW16 Om Parkash in this regard. But no action was taken thereon. Rather marks of the candidates were changed in the award list; original answer sheets of 62 candidates who were asked to appear for re-typing test were destroyed. Besides, the accused out of whom Jagjit Singh Sidhu, Pavitter Pal Kaur, Tirath Singh and retired Col. Zora Singh were members of the Junior Selection Committee and Amar Singh was Chairman of the Typing Test Committee and Tota Singh, the then Education Minister who had appointed Chairman of the P.S.E.B. as per provisions of the Punjab School Education Board Act, 1969, the respondents also took part in commission of the offence. As per the allegations, the offence in question was committed by the remaining accused in conspiracy with Tota Singh, the then Education Minister. Respondents Dr. Kehar Singh was Chairman of the P.S.E.B., who constituted various committees;

Mohinder Singh Karir and Varinder Kumar were members of the Type Test Committee headed by accused Amar Singh; Tej Ram Goel was Special Secretary to the Chairman; Charanjit Singh Meelu, Varinder Kumar and Amarjit Singh Multani were the members of the committee alongwith Raminder Singh (since deceased), which had opened the sealed envelopes of award list, which had been found tampered with. Specific allegations have been leveled against these respondent in statements of the above said witnesses. The prosecution examined respondent Mohinder Singh as PW3 and respondent Varinder Kumar as PW5. Dr. Kehar Singh was initially arrayed as accused and at the time of filing of final report, it was stated that investigation against him is still pending and supplementary report shall be presented on completion of the investigation against him. However, no supplementary report has been filed by the prosecution against Dr. Kehar Singh, till today. PW3 Mohinder Singh Karir and PW5 Varinder Kumar though appeared in the witness box, but they did not support the prosecution case and were declared hostile.”

The submission made by Learned Counsel for the petitioners that at the behest of Om Parkash PW16 (the applicant), the application could not have been entertained and that too at the end of the trial, will have to be rejected as it sans any merit.

Perusal of the above reasons and the plea raised by PW16 Om Parkash clearly shows that except that the petitioners were members of the Committee for conducting the typing test, there is no allegation regarding

any overt act in committing any offence. It appears that they were made the witnesses by the prosecution for that reason since the investigation did not find them having done any mal-practice or committing any offence. This court had stayed against the petitioners.

Perusal of the entire material quoted above, to my mind, does not show anywhere any incriminating evidence much less such evidence which could lead to conviction as contemplated by the Apex Court.

In the result, I hold that the impugned order is not based on the material nor does it comply with the requirements laid down by the Apex Court in the aforesaid Constitution Bench judgment. These petitions must, therefore, succeed.

As stated earlier, in CRR-2727-2014, Charanjit Singh Meelu has challenged the charges framed against him by the trial court. In view of the fact that the summoning order itself has been found to be illegal by me as above, the petition CRR-2727-2014 must be held to have been rendered infructuous and the same is disposed of as such. In the result, I make the following order:-

ORDER

- (i) CRR Nos.2772 and 493 of 2014 are allowed;
- (ii) Impugned summoning order under Section 319 Cr.P.C., dated 27.11.2013, is quashed and set aside;
- (iii) CRR-2727-2014 is disposed of as infructuous in view of the order passed in CRR Nos.2772 and 493 of 2014.

August 22, 2017.
kadyan

[A.B. Chaudhari]
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No