

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

CRR No.266 of 2017 (O&M)

Date of decision:27.01.2017

Kapil Kumar

... Petitioner

Vs.

State of Haryana & another

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Abhishek Sindhwani, Advocate for the petitioner.

...

TEJINDER SINGH DHINDSA, J.

The instant revision petition is directed against the order dated 07.11.2016 passed by the learned Additional Sessions Judge, Jind (Annexure P-2), whereby an application under Section 319 Cr.P.C. filed by the accused, Kapil Kumar (present petitioner) to summon Ram Niwas (respondent No.2 herein) to face trial as an additional accused in case FIR No.32 dated 19.08.2015 under Sections 7/13/49/88 of the Prevention of Corruption Act, registered at Police Station SVB, Hisar has been dismissed.

Brief facts emanating from the pleadings on record are that the complainant Devender Kumar asserted that he was running a factory in the name of M/s Shri Ganesh Enterprises and the transformer of his factory was out of order for the last many days. He had filed an application in the office of the concerned S.D.O. to install/replace the transformer. In this connection, he had met the Junior Engineer, Kapil Kumar i.e. the present petitioner on 14.08.2015 for preparation and

submission of necessary documents. Complainant alleged that J.E. Kapil Kumar demanded Rs.7000/- as bribe and out of which Rs.2000/- was given upfront and Kapil Kumar ask him to give the remaining amount of Rs.5000/- to Ram Niwas, Assistant Lineman (in short ALM) i.e. respondent No.2 herein. As per prosecution version, the balance amount of bribe i.e. Rs.5000/- was handed over by the complainant to the respondent, Ram Niwas in the premises of his factory at the time of installation of the transformer and he was apprehended by the vigilance team. Ram Niwas, respondent at that point of time took a stand that he had been sent by Kapil Kumar J.E. to receive Rs.5000/- from the complainant as labour charges for installation of the transformer and denied that the complainant had given such amount towards bribe. Even complainant at that point of time stated to the vigilance team that ALM, Ram Niwas respondent had no knowledge of the alleged bribe amount demanded by J.E. Kapil Kumar. Thereafter the raiding party reached near the office of S.D.O., Julana and respondent Ram Niwas, ALM telephonically got in touch with J.E. Kapil Kumar and informed him that he had brought Rs.5000/- from Devender Kumar complainant and asked him to come out of the office to receive such amount. At such juncture, J.E. Kapil Kumar came out of the office and collected Rs.5000/- from Ram Niwas/ respondent. Kapil Kumar J.E. i.e. the present petitioner was apprehended by the Vigilance team at the spot and further proceedings of hand wash, identification of the currency notes etc. was done.

Counsel appearing for the petitioner would submit that in the report submitted by the Investigating Agency under Section 173 Cr.P.C.,

it was Ram Niwas/respondent, who had received the tainted amount of Rs.5000/- from the complainant/Devender Kumar in the factory premises. Further submitted that even PW2 Devender Kumar while appearing in the witness box had stated that he had given an amount of Rs.5000/- to Ram Niwas/respondent. It is contended that PW1 Rajpal, ALM in the office of S.D.O., Julana had stated that S.D.O. (Operation), Julana is the Sanctioning Authority for installation of transformers and Ram Niwas, respondent is posted as ALM in the said office. The argument raised is that under such circumstances, sufficient and cogent evidence had come before the trial Court to summon the respondent/Ram Niwas as an additional accused to face trial. It has been argued that Ram Niwas, ALM having received Rs.5000/- from the complainant first in point of time has subsequently changed the stand by stating that such amount was taken by him at the instance of Kapil Kumar J.E. It is contended that on the face of it, respondent/Ram Niwas, ALM was involved in the commission of the alleged offence and as such, the application moved by the accused Kapil Kumar J.E. to summon Ram Niwas, ALM as an additional accused ought to have been allowed.

Counsel for the petitioner has been heard at length.

Section 319 Cr.P.C. reads as under:

“319. Power to proceed against other persons appearing to be guilty of offence.

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court

may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under subsection (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

The extent of power with the Court to summon persons than the accused under Section 319 Cr.P.C. to stand trial as additional accused come up for consideration before the Hon'ble Supreme Court in ***Hardeep Singh Versus State of Punjab & others 2014 (1) RCR (Criminal) 623.***

The Apex Court observed that although only prima facie case is to be established from the evidence led before the Court while exercising power under Section 319 Cr.P.C. to summon additional accused, but it would require much stronger evidence than mere probability of such persons complicity for the offence. The test that has to be applied is one which is more than prima facie case as exercised at the stage of framing of charge but short of satisfaction to an extent that the evidence if gone un rebutted would lead to conviction. In the absence of such satisfaction, the Court would refrain from exercising power under Section 319 Cr.P.C.

Adverting back to the facts of the present case, the prosecution has examined complainant/Devender Kumar as PW2. The complainant has categorically stated that after preparing the file with regard to installation/replacement of transformer, J.E. Kapil Kumar had called him to his office and where he had gone on 18.08.2015 and a demand of Rs.10,000/- towards illegal gratification was made but the deal was settled for Rs.7000/-. Complainant stated that since he was having only Rs.2000/- at that point of time, he had made over such amount and requested J.E. Kapil Kumar that he would give the remaining amount on the next day i.e. upon completion of work. Complainant further deposed that on 18.08.2015, J.E. Kapil Kumar made a telephonic call to him that one Ram Niwas, ALM would come and the balance amount of Rs.5000/- be given to him.

PW3 Jaipal deposed that he being the Duty Magistrate with the vigilance team had reached the factory of the complainant/Devender Kumar and after sometime, a person of the name of Ram Niwas came there and who told the complainant that Kapil Kumar, J.E. had sent him for receiving Rs.5000/-. Ram Niwas respondent had informed the vigilance team that he had taken Rs.5000/- at the behest of J.E. Kapil Kumar and in the presence of the vigilance team had got in touch with Kapil Kumar J.E. on telephone that he had got Rs.5000/- and which was received by Kapil Kumar J.E. by coming outside the office. J.E. Kapil Kumar was then apprehended by the vigilance team.

Complainant/Devender Kumar has been categoric in his deposition that it is Kapil Kumar J.E. who had demanded the amount

towards illegal gratification and not Ram Niwas, ALM (respondent herein). Mere suspicion voiced in an application under Section 319 Cr.P.C. cannot be made the basis for summoning a person as an additional accused to face trial.

This Court is of the considered view that the learned Additional Sessions Judge, Jind while passing the impugned order dated 07.11.2016 declining the application under Section 319 Cr.P.C. to summon the private respondent herein as additional accused has rightly applied the test laid down in Hardeep Singh's case (supra).

No infirmity in the impugned order is found and accordingly the instant revision petition is dismissed.

27.01.2017*harjeet***(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |