

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

**CRM-M-25522 of 2015(O&M)
Date of Decision: 11.07.2018**

Ranjit Singh & ors.

....Petitioners

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. RDS Sidhu, Advocate, for
Mr. BS Sewak, Advocate, for the petitioners.

Mr. Davinder Bir Singh, DAG, Punjab.

Mr. G.S. Nagra, Advocate, for respondent No.2.

RAMENDRA JAIN, J. (ORAL)

Prayer in the instant petition under Section 482 Cr.P.C. has been made for quashing order dated 08.07.2015 passed by the Revisional Court in revision against order dated 17.11.2014 (Annexure P-6) of the Judicial Magistrate, Ist Class, Rupnagar, whereby the petitioner was summoned under Section 319 Cr.P. C.

In nutshell, vendors Ranjit Kaur, Kuldip Singh and Kulwinder Singh, (children of Kaka Singh), agreed to sell their 3/5th share in land measuring 43 kanals 12 marlas situated in the revenue estate of Village Barha Chaunta, H.B. No.67, Tehsil Chamkaur Sahib, District Rupnagar, vide agreement dated 24.12.2002, in a sum of ₹9,50,000/- to respondent No.2-complainant and received full sale consideration on that very day with the undertaking that they would not enter into further agreement to sell with any other person, except complainant Gurmukh Balwinder Singh. However,

Vendors aforesaid sold the land in utter violation of their agreement dated

24.12.2002 in favour of respondent No.2- complainant Gurmukh Balwinder Singh. Therefore, the complainant lodged FIR No. 68, dated 23.08.2012, under Sections 406/420/120-B IPC (Annexure P-3), at Police Station Chamkaur Sahib, District Rupnagar, against the vendors aforesaid and the petitioners. During investigation, the petitioners were found innocent and they were placed in Column 2 under Section 173 Cr.P.C. During trial, the petitioners were summoned under Section 319 Cr.P.C. to face trial.

Learned counsel for the petitioners *inter alia* contends that the petitioners are bond fide purchasers of the land in question. They never committed any fraud or cheating with the complainant. They did not ever violate any terms and conditions of the agreement to sell between the complainant and their earlier vendors. The civil suit filed by the complainant for specific performance of agreement to sell has already been dismissed. Learned trial Court did not appreciate that the petitioners at any point of time were not involved in the alleged commission of fraud.

On the other hand, learned counsel for the State and complainant-respondent No.2 jointly refuting the above submissions of learned counsel for the petitioners submitted that in civil suit filed by respondent No.2-complainant against his vendors, the petitioners were permitted to be impleaded as party upon his application under Order I Rule 10 CPC. Therefore, the petitioners had full knowledge about the agreement to sell between respondent No.2-complainant and their vendors. Despite that, they purchased the land in question from the vendors of the complainant, which amounts to cheating and committing fraud with him. The petitioners have rightly been summoned by the trial Court under Section 319 Cr.P.C. as additional accused.

Having given thoughtful consideration to the submissions made by learned counsel for both the sides, I find merit in instant revision petition for the reason that petitioners had purchased the land in question after 10 years of agreement to sell dated 24.12.2002 in favour of the complainant. Therefore, they did not ever violate any term and condition of the same. Civil suit filed by respondent No.2-complainant for specific performance has already been dismissed. Resultantly, any agreement to sell on the basis of which respondent No.2 stakes his claim, has lost its significance. There is no specific role attributed to the petitioners as to in what manner, they participated in the commission of alleged crime by his vendors. Summoning of an additional accused under Section 319 Cr.P.C is a matter of grave concern. The power conferred under Section 319 Cr.P.C is a discretionary and an extra ordinary, which has to be exercised with care and caution and only in those cases, where the circumstances of the case so warrant.

Hon'ble Supreme Court in the latest judgment in ***Brijendra Singh and others v. State of Rajasthan***, AIR 2017 Supreme Court 2839 has referred the judgment of ***Hardeep Singh v. State of Punjab and others***, AIR 2014 SC 1400, wherein the Hon'ble Supreme Court has held as under: -

“105. 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.

106. 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 un rebutted, 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.”

In the instant case, there is not an iota of evidence available on record- what to talk of any cogent and convincing about the complicity of the petitioners in the alleged commission of crime. Therefore, in the considered opinion of this Court, the petitioners have wrongly been summoned under Section 319 Cr.P.C as additional accused.

In view of the discussion made above, petition is allowed. Consequently, impugned order is set aside.

July 11, 2018
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(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No