

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

CRM-M-38352 of 2013.

Decided on:-August 09, 2018.

Charanjit Kaur.

.....Petitioner.

Versus

State of Punjab and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Ms. Vanita Sapra Kataria, Advocate
for the petitioner.

Mr. Surinder Pal Singh Tinna, Addl. A.G., Punjab.

Mr. Daman Bir Sobti, Advocate
for respondents No.2 and 3.

HARI PAL VERMA, J.

The petitioner has filed present petition under Section 482 Cr.P.C. for setting aside the order dated 25.08.2010 (Annexure P-6) passed by learned Judicial Magistrate 1st Class, Ludhiana, whereby the application under Section 319 Cr.PC filed by the petitioner-complainant for summoning of respondents No.2 and 3 as additional accused, was dismissed.

Challenge has also been laid to order dated 27.07.2013 (Annexure P-8) passed by learned Additional Sessions Judge, Ludhiana vide which the order dated 25.08.2010 passed by learned Magistrate was upheld and the revision petition filed by the petitioner-complainant was dismissed.

Briefly stated, on the statement of the petitioner-complainant, FIR No.139 dated 16.12.1999 under Sections 420, 467, 468, 471 and 120-B IPC was registered at Police Station Sahnewal, District Ludhiana on the

allegations that the persons named in the FIR have conspired and fabricated documents and have made a fake affidavit showing no objection on behalf of the complainant and her children by forging their signatures. As a result thereof, the accused succeeded in getting their right in the house and the plot on the basis of mutation in their names. The petitioner-complainant had named the following persons as accused:

1. Harbhajan Singh (died)
2. Raghubir Singh (died)
3. Gurmeet Singh
4. Bhag Singh (Lambardar)
5. Gurpreet Singh (Patwari)
6. Sarup Singh (respondent No.2 herein)
7. Samittar Singh (respondent No.3 herein)

When the trial in the case was pending, the petitioner moved an application under Section 319 Cr.PC for summoning the respondents No.2 and 3 (Sarup Singh and Samittar Singh) as accused on the ground that their role finds mention in the statement of the complainant and a specific allegation of fabrication and forging documents as well as one affidavit has been attributed to them. These accused had prepared a false affidavit and used the same for transferring the ownership of the land from the name of rightful owners to their names. Earlier also, the aforesaid accused were ordered to be summoned on an application under Section 319 Cr.P.C. vide order dated 20.01.2007 passed by the Court of Judicial Magistrate 1st Class, Ludhiana and respondents No.2 and 3 filed a revision petition before the Additional Sessions Judge, Ludhiana, but the said revision petition was dismissed by learned Additional Sessions Judge, Ludhiana vide judgment dated 18.08.2007

affirming the summoning order. However, the respondents No.2 and 3 had approached this Court and filed a petition under Section 482 Cr.PC for quashing of said orders of summoning.

Vide order dated 19.03.2008 passed in ***Criminal Misc. No.44088-M of 2007***, this Court though had set aside the order of summoning, but held that the State shall be at liberty to file an application under Section 319 Cr.PC afresh at an appropriate stage, which shall be disposed of by the trial Court without being influenced by the observations made in the order passed by this Court.

Thereafter, the petitioner moved an application under Section 319 Cr.PC, which was dismissed by learned trial Court vide impugned order dated 25.08.2010 on the ground that the prosecution has failed to prove any offence against respondents No.2 and 3. The trial Court has further observed that during the cross-examination of the complainant, the defence counsel proved that in a civil suit, the Will dated 10.03.1988 executed by mother-in-law of the complainant in favour of accused Gurmeet Singh and others was upheld by the civil Court and she also admitted that the mutation was also sanctioned on the basis of that Will. The decree passed by the civil Court was never challenged. Above all, there is also an admission in her cross-examination that neither accused Sarup Singh nor Samittar Singh were in India at the time of commission of alleged offence. Thus, the mother-in-law of the complainant had not seen the accused committing the offence i.e. forging the signatures of the complainant and of her sons and daughters.

Against the aforesaid order dated 25.08.2010 passed by the trial Court, the petitioner filed a revision petition before the Court of Session, but

the same was dismissed by learned Additional Sessions Judge, Ludhiana vide impugned order dated 27.07.2013.

It is in these circumstances, the present petition has been filed by the petitioner-complainant.

Learned counsel for the petitioner-complainant has argued that the grounds on which the application filed by the petitioner under Section 319 Cr.PC was dismissed by the Courts below, are not sustainable in the eyes of law. It is not always necessary that the respondents sought to be summoned as accused are required to be present. Only meeting of mind is sufficient to attribute their role. They are the beneficiaries of the document and they can execute their plan while sitting outside India as well. It is not always necessary that the complainant should have seen the accused while signing the document. There is a clear conspiracy, as provided under Section 120-B IPC, on the part of respondents No.2 and 3 sought to be summoned as accused.

On the other hand, learned counsel for respondents No.2 and 3 has argued that the FIR in the case was registered on 16.12.1999 and the accused are facing trial since then. Even the defence evidence has been closed. If the present application is allowed, it would lead to a *de novo* trial. Moreover, it is not the basis of the affidavit, rather, it is on the basis of the Will dated 10.03.1988, the mutation was sanctioned and the said Will has attained finality. In the complaint moved by the petitioner-complainant, there is no allegation of meeting of mind and the only allegation is that all the accused together have forged the document. He has further argued that vide order dated 19.03.2008, while allowing the revision petition filed by the

respondents No.2 and 3, this Court had granted liberty only to the State to file an appropriate application under Section 319 Cr.PC at an appropriate stage, but the present application has not been filed by the State and, therefore, the same is liable to be dismissed.

I have heard learned counsel for the parties.

The precise allegation of the petitioner-complainant against respondents No.2 and 3 is that they have conspired to fabricate the forged document which has adversely affected the interest of the complainant and, therefore, necessity has arisen to file an application under Section 319 Cr.PC. Even if the State has not filed the application under Section 319 Cr.PC, the petitioner being an aggrieved person has a legal right to file the application.

The order dated 19.03.2008 passed by this Court in ***Criminal Misc. No.44088-M of 2007*** filed by respondents No.2 and 3 is very categorical. The liberty was granted to the State only. Moreover, this is the second round of litigation when the petitioner has been pursuing her application under Section 319 Cr.P.C. When the affidavit dated 06.09.1996 was executed, the respondents No.2 and 3 were not in India and were living abroad (USA). Earlier also, they were named in the FIR, and the police had conducted a thorough investigation and found them innocent and as such, the Challan was presented by putting their names in Column No.2. Even the finger print expert has nowhere indicated that the signatures on the affidavit have been forged by respondents No.2 and 3, namely, Sarup Singh and Samittar Singh.

Moreover, civil litigation is already pending between the parties.

The mutation which has been sanctioned in favour of the accused is not on the

basis of the affidavit, rather, the same was sanctioned on the basis of a Will dated 10.03.1988, which has been taken note by the civil Court. Further, the mutation itself does not confer any title and it is merely an entry to put the revenue record straight. No ownership, interest or title can be transferred on the basis of any such affidavit.

No doubt, Section 319 Cr.PC provides that 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.

However, at the same time, no person on an application under Section 319 Cr.PC can be summoned as an additional accused merely on the basis of statement of the complainant recorded in the Court unless there is material to summon. In order to summon an accused, some “fresh evidence” must have come on record so as to impel the Court to summon such person as an additional accused.

Hon'ble Supreme Court in ***Pepsi Foods Limited and another Versus Special Judicial Magistrate and others-(1998) 5 Supreme Court Cases 749*** has held as under:

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the

evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

In ***Hardeep Singh Versus State of Punjab (2014) 3 SCC 92***, it has been held by the Apex Court that the degree of satisfaction for invoking Section 319 Cr.P.C. should be of more than a prima-facie case, as exercised at the time of framing of charge, but short of satisfaction to an extent that evidence, if not rebutted, may lead to conviction of the person sought to be added as accused.

Therefore, this Court finds that there is no illegality or irregularity in the impugned order dated 25.08.2010 (Annexure P-6) passed by learned Judicial Magistrate 1st Class, Ludhiana and the impugned judgment dated 27.07.2013 (Annexure P-8) passed by learned Additional Sessions Judge, Ludhiana, which may warrant interference.

Accordingly, the impugned orders passed by learned Courts below are affirmed and the present petition, being devoid of any merit, is dismissed.

(HARI PAL VERMA)
JUDGE

August 09, 2018
Yag Dutt

Whether speaking/reasoned:	Yes
Whether Reportable:	No