

201-A

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

CRR No.1252 of 2015 (O&M)
Date of Decision: September 21, 2018

Surinder Kumar

...Petitioner

VERSUS

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Pratham Sethi, Advocate
for the petitioner.

Mr.Pawan Sharda, Sr.DAG, Punjab
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner against respondent State of Punjab, challenging the order dated 16.01.2015 passed by learned Addl. Sessions Judge, Amritsar, vide which application filed by the prosecution under Section 319 Cr.P.C. for summoning petitioner as an additional accused allowed.

It is stated in the application that complaint Davinder Singh Bhullar, during his evidence, has specifically deposed against Surinder Kumar, S.O. but he has not been challaned and has been kept in column No.2. It is further stated in the application that there is direct evidence against Surinder Kumar. Davinder Singh Bhalla categorically stated that

Surinder Kumar (present petitioner) and Amrit Lal demanded ₹50,000/-

form him as bribe to settle the case and then, a trap was laid. Surinder Kumar handed over ₹20,000/- bribe money to Amrit Lal, who said that he will distribute the same with Surinder Kumar.

Learned Addl. Sessions Judge, Amritsar, vide impugned order dated 16.01.2015, allowed the application and summoned the petitioner to face trial under Section 7 and 13(2) of the Prevention of Corruption Act. Aggrieved from this order, present revision petition has been filed.

Notice of motion was issued. Learned State counsel appeared and contested the petition.

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

The perusal of the record shows that the petitioner is a public servant and this fact is also admitted by learned State counsel. It is also admitted by learned State counsel that no sanction has been received qua Surinder Kumar, S.O., so far. It is also clear that the petitioner was found innocent during investigation.

The Hon'ble Supreme Court in ***Dilawar Singh vs. Parvinder Singh @ Iqbal Singh & Anr, 2005(4) RCR (Criminal) 855***, has held as under:-

"4. In our opinion, the contention raised by the learned counsel for the appellant is well founded. Sub-section (1) of Section 19 of the Act, which is relevant for the controversy in dispute, reads as under:

"19. Previous sanction necessary for prosecution - (1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,-

(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;

(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office."

This section creates a complete bar on the power of the Court to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction of the competent authority enumerated in clauses (a) to (c) of this sub-section. If the sub-section is read as a whole, it will clearly show that the sanction for prosecution has to be granted with respect to a specific accused and only after sanction has been granted that the Court gets the competence to take cognizance of an offence punishable under Sections 7, 10, 11, 13 and 15 alleged to have been committed by such public servant. It is not possible to read the section in the manner suggested by learned counsel for the respondent that if sanction for prosecution has been granted qua one accused, any other public servant for whose prosecution no sanction has been granted, can also be summoned to face prosecution.

*"8. The contention raised by learned counsel for the respondent that a Court takes cognizance of an offence and not of an offender holds good when a Magistrate takes cognizance of an offence under Section 190 Cr.P.C. The observations made by this Court in *Raghubans Dubey v. State of Bihar* (supra) were also made in that context. The Prevention of Corruption Act is a special statute and as the preamble shows this Act has been enacted to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. Here, the principle expressed in the maxim *Generalia specialibus non derogant* would apply which means that if a special provision has been made on a certain matter, that matter is excluded from the general provisions. (See *Venkateshwar Rao v. Govt. of Andhra Pradesh*, AIR 1966 Supreme Court 828, *State of Bihar v. Yogendra Singh*, AIR 1982 Supreme Court 882 and *Maharashtra State Board of Secondary Education v. Paritosh Bhupesh Kumar Sheth*, AIR 1984 Supreme Court 1543). Therefore, the provisions of Section 19 of the Act will have an overriding effect over the general provisions contained in Section 190 or 319 Cr.P.C. A Special Judge while trying an offence under the Prevention of Corruption Act, 1988, cannot summon another person and proceed against him in the purported exercise of power under Section 319 Cr.P.C. if no sanction has been granted by the appropriate authority for prosecution of such a person as the existence of a sanction is sine qua non for taking cognizance of the offence qua that person.*

9. For the reasons mentioned above, we are of the opinion that the impugned order of the High Court directing summoning of the appellant Dilawar Singh is wholly illegal and cannot be sustained. The appeals are accordingly allowed. The impugned order dated 3.7.2002 of the High Court is set aside and the order dated 7.1.2002 of the Special Judge, Barnala, is restored. ”

The above judgment has also been relied upon by the Hon'ble Supreme Court in ***Surjinderjit Singh Mand & Anr. vs. State of Punjab & Anr., 2016(3) RCR (Criminal) 654*** and held that for summoning public servant as additional accused under Section 319 Cr.P.C. during course of trial, sanction for prosecution is a mandatory pre-requisite.

As there is no such sanction under Section 19 of the Act, therefore, petitioner cannot be summoned as additional accused by the Court under Section 319 Cr.P.C.

In view of the above discussion, I find that impugned order dated 16.01.2015 passed by learned Addl. Sessions Judge, Amritsar, is not as per law and the same is set aside.

Therefore, finding merit in the present revision petition, the same is allowed.

September 21, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No