

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

CRR No.2300 of 2016

Date of Decision: 07.12.2018

Santosh Kumari

....Petitioner

Versus

State of Punjab and another

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Ms. Monita Mehta, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. D.A.G., Punjab.

Mr. Sandeep Arora, Advocate
for respondent No.2.

DAYA CHAUDHARY, J.

Petitioner-Santosh Kumari has filed her present revision petition to challenge the impugned order dated 03.05.2016, whereby, she has been summoned under Section 319 Cr.P.C to face trial for offence punishable under Sections 406/498-A of the Indian Penal Code.

Learned counsel for the petitioner submits that the petitioner has wrongly been made as an accused, whereas, she was not involved. Learned counsel also submits that it was not a case of proper appreciation of evidence on record and findings recorded by the Court below are contrary to the facts and law. Petitioner has been summoned only on the basis of general allegations, whereas, neither any specific allegation is there nor any role has been attributed to her. There was no evidence available on record to summon the petitioner as an additional accused. Learned counsel also

submits that main accused Ajay Kumar also filed **CRM-M No.39699 of 2015** seeking direction from this Court to investigate the case properly. At the end, learned counsel for the petitioner submits that neither there is any direct or indirect evidence nor specific allegation on record but still the petitioner has been summoned.

Learned State counsel submits that the petitioner was found innocent during investigation but subsequently, she has been summoned under Section 319 Cr.P.C after recording the statement of the complainant.

Learned counsel for respondent No.2 submits that there were specific allegations against the petitioner and she was wrongly declared innocent by the Investigating Officer. Subsequently, she has been summoned as there were sufficient evidence on the basis of which, she can be convicted and hence, no interference is required in the order of summoning.

Heard the arguments of learned counsel for the parties and have also perused the documents available on the file.

Briefly, the facts of the case, as made out in the present petition, are that FIR, in question, was registered on the basis of complaint made by respondent No.2 levelling allegations against the present petitioner and co-accused. The matter was investigated by the Investigating Agency and the petitioner was found innocent during investigation. Thereafter, the statement of the complainant was recorded. After recording the statement of the complainant, an application was moved under Section 319 Cr.P.C by the prosecution for summoning the present petitioner as an additional accused. Initially, the challan was presented against main accused Ajay Kumar. The complainant named the present petitioner by attributing specific role. The

application moved by the prosecution under Section 319 Cr.P.C was allowed as there was reasonable prospect of conviction and the present petitioner was ordered to be summoned to face trial for offence punishable under Sections 406/498-A of the Indian Penal Code by Judicial Magistrate Ist Class, Jalandhar after relying upon certain judgments, wherein, it was held that at the time of summoning of accused under Section 319 Cr.P.C., only a reasonable prospect of conviction is to be seen. Nothing is mentioned in order dated 03.05.2016 to show as to what role was played by the petitioner. Even it was not discussed in the order as to how the petitioner was found innocent.

On perusal of application moved by the prosecution as well as order dated 03.05.2016, it is apparent that the challan was presented against main accused Ajay Kumar and at the time of recording of the statement of the complainant, the present petitioner was named. The role of the petitioner has not been mentioned in the complaint. Simply it has been mentioned that the present petitioner was also there along with main accused. Neither any role has been attributed nor any overt act has been played by the present petitioner. The application has been allowed without mentioning any reason as to how the present petitioner was involved in the commission of offence.

Summoning of an accused is a serious matter. In the impugned order of summoning, nowhere it has been discussed as to what was the evidence collected by the Investigating Agency to show that the present petitioner was also involved in the commission of offence. As per provisions of Section 319 Cr.P.C., in case, it appears to the Summoning Court that any other person, who has not been challaned is also involved in the commission of offence, can be summoned and tried together with the

accused, who are facing trial. This remedy can be availed when the Court comes to the conclusion that during the enquiry or trial, it appears to the Court that the person sought to be summoned is also involved in the commission of offence.

While exercising power under Sections 319 Cr.P.C., it is to be seen by the Summoning Court as to what role has been played by the person, who is sought to be summoned, whether said person is also involved but has not been challaned. Power under Section 319 Cr.P.C is an extraordinary power, which is to be exercised if, compelling reasons are there or more than *prima facie* case is made out. Only on the basis of vague and general allegations or on recording casual statement of the witnesses, such person cannot be summoned. The Court is to arrive at a conclusion/satisfaction that the evidence adduced on behalf of the prosecution, if goes un-rebutted, would lead to conviction of persons sought to be summoned. It can be exercised if it appears to the Court that there is an evidence which shows the involvement of such person in the commission of offence. The Summoning Court must be satisfied that there exists a possibility that the person sought to be summoned can be convicted.

In the present case, neither any finding has been recorded by the Summoning Court regarding involvement of the petitioner in the commission of offence nor it has been mentioned in the impugned order that the petitioner was also involved in the commission of offence.

Accordingly, I am of the considered view that impugned order dated 03.05.2016 passed by the Judicial Magistrate Ist Class, Jalandhar is not only non-speaking but the same has been passed without any application of mind as neither any satisfaction has been recorded nor any finding has

been given to show as to what evidence has come in the statement of the complainant, due to which, the petitioner has been summoned.

Accordingly, the present petition is allowed and impugned order dated 03.05.2016 passed by the Judicial Magistrate Ist Class, Jalandhar is hereby set aside.

(DAYA CHAUDHARY)
JUDGE

07.12.2018
gurpreet

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No