

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

CRR No.3689 of 2016 (O&M)

Date of Decision: 23.01.2018

Puneet Miglani

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present:- Mr. Jagjit Gill, Advocate,
for the petitioner.

Ms. Jaspreet Kaur, AAG, Punjab.

Mr. D.S.Malwai, Advocate,
for respondent No.2.

TEJINDER SINGH DHINDSA, J.(ORAL)

The instant revision petition is directed against the order dated 08.09.2016 passed by the learned Additional Sessions Judge, Bathinda and in terms of which an application preferred by the petitioner herein/complainant for summoning DSP Janak Singh, Inspector Gurdev Singh Bhalla, Head Constable Harjinder Singh and Head Constable Rajwant Singh as additional accused to face trial in FIR No.11 dated 11.09.2013 under Sections 166/385 IPC as also under Sections 7, 13 (2) of the Prevention of Corruption Act, Police Station Vigilance Bureau, Bathinda has been dismissed.

Briefly it may be noticed that FIR No.91 dated 18.12.2012 was registered at Police Station Phul, Bathinda under Sections 420, 406, 457 IPC and in which one Dev Raj Miglani i.e. father of the petitioner was implicated. Allegations were levelled

by the present petitioner as also his sister with regard to police officials demanding illegal gratification to save their father, namely, Dev Raj Miglani from torture and to release him. FIR No.11 dated 11.09.2013 came to be registered on such allegations and after completion of investigation Head Constable Kikkar Singh was nominated as accused and is facing trial. Statement of the present petitioner, namely, Puneet Miglani was recorded before the trial Court as PW-1 and in which he specifically named the private respondents herein to be also involved in the matter. Deposition of the petitioner as PW-1 and placed on record at Annexure P-1 contains assertions that on 03.09.2013, the petitioner along with his sister went to the Office of DSP Janak Singh at Bathinda and wherein the other police officials/private respondents were present and whereupon father of the petitioner, namely, Dev Raj Miglani was produced and a sum of Rs.24 lacs was demanded as bribe to save accused Dev Raj.

It is on the strength of such deposition that the application under Section 319 Cr.P.C. was filed to summon private respondents as additional accused and which has been declined vide impugned order dated 08.09.2016.

Perusal of the impugned order would reveal that the application under Section 319 Cr.P.C. moved by the petitioner has not been dealt with on merits and the same has been declined on the sole basis that there is no prior sanction to prosecute the police officials sought to be summoned as additional accused. Reasoning adopted by the trial Court in the impugned order dated 08.09.2016

is to the following effect:

“This being a settled proposition of law, there is no room left for this Court to consider the application under Section 319 Cr.P.C. sans the previous sanction of DSP Janak Singh, Inspector Gurdev Singh Bhalla, Head Constable Harjinder Singh and Head Constable Rajwant Singh, as no cognizance can be taken by the Court without prior sanction to prosecute a public servant.”

Having heard counsel for the parties at length, this Court is of the considered view that a case for remand to the trial Court has been made out to pass an order afresh on the application filed by the petitioner under Section 319 Cr.P.C.

The Hon'ble Supreme Court in ***Abhay Singh Chautala Vs. Central Bureau of Investigation 2011 (7) SCC 141*** held that even when the appellants in that case held more than one offices during the check period, that they alleged to have abused, there would be no requirement of sanction if on the date when cognizance is taken they are not continuing to hold that very office. It was held that the relevant time is the date on which cognizance is taken. If on such date, the appellant was not a public servant, there was no question of any sanction. It was further observed that even if the appellant continues to be a public servant but in a different capacity or is holding the different office than the one which is alleged to have been abused, still there would be no question of sanction.

In a recent judgment of the **Apex Court**, **L. Narayana Swamy Vs. State of Karnataka and others 2016 (4) R.C.R. (Criminal) 315** one of the specific issues formulated for examination was to the following effect:

“Whether a public servant who is not on the same post and is transferred (whether by way of promotion or otherwise to another post) loses the protection under Section 19 (1) of the PC Act, although he continues to be a public servant, albeit on a different post?”

Having considered the judgments rendered in **Abhay Singh Chautala's case (supra)** and **Parkash Singh Badal and another Vs. State of Punjab and others 2007 (1) SCC 1** it was observed as follows:

“It is also made clear that where the public servant had abused the office which he held in the check up period, but had ceased to hold 'that office' or was holding a different office, then sanction would not be necessary. Likewise, where the alleged misconduct is in some different capacity than the one which is held at the time of taking cognizance, there will be no necessity to take the sanction. However, one discerning factor which is to be noted is that in both these cases the accused persons were public servants in the capacity of Member of Legislative Assembly/ by virtue of political office. They were not public servants as Government employees. However, detailed discussion contained in these judgments would indicate that the principle laid down therein

would encompass and cover the cases of all public servants, including Government employees who may otherwise be having constitutional protection under the provisions of Article 309 and 311 of the Constitution.”

Adverting back to the facts of the present case, learned State counsel upon instructions from ASI Jasbir Singh, Police Station Vigilance Bureau, Bathinda has apprised the Court of a factual aspect which would be relevant.

State counsel has submitted that respondent No.2 DSP Janak Singh superannuated on 30.04.2016. Respondent No.3 Inspector Gurdev Singh Bhalla was transferred on 26.07.2016. Likewise respondent Nos.4 and 5 Head Constable Harjinder Singh and Head Constable Rajwant Singh respectively stood transferred on 13.09.2013.

The trial Court has overlooked such material aspect inasmuch as the private respondents as on the relevant date already stood either retired or transferred from the particular post that they had alleged to have misused. The requirement of sanction to prosecute in terms of Section 197 Cr.P.C. and Section 19 of the Prevention of Corruption Act had to be examined against the backdrop of such factual premise noticed hereinabove. Such aspect has not been dealt with at all.

For the reasons recorded above, the present petition is allowed. Impugned order dated 08.09.2016 passed by the learned Additional Sessions Judge, Bathinda is set aside. Matter is remanded back to the trial Court to pass an order afresh on the

application filed by the petitioner under Section 319 Cr.P.C. seeking to summon the private respondents herein as additional accused.

Let fresh order be passed after hearing parties concerned and in the light of dictum laid down by the Apex Court in ***L. Narayana Swamy's case (supra)*** within a period of 02 months from the date of receipt of a certified copy of this order.

Petition is allowed in the aforesaid terms.

It is clarified that this Court has not expressed any opinion on the merits of the case.

23.01.2018

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No