

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

263

CRM-M-9422-2017

Date of Decision: April 17, 2018

Tejinder Singh and others

.....Petitioner(s)

versus

State of Punjab

.....Respondent(s)

263-A

CRM-M-9466-2017(O&M)

Monika Rani and others

.....Petitioner(s)

versus

State of Punjab

.....Respondent(s)

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Birinder Singh Khehar, Advocate
for the petitioners in **CRM-M-9422-2017**.

Mr. Hemant Bassi, Advocate
for the petitioners in **CRM-M-9466-2017**.

Mr. Kirat Singh Sidhu, DAG, Punjab.

Mr. Anupam Singla, Advocate
for the complainant.

Sudhir Mittal, J. (Oral)

This Judgment will dispose of **CRM-M-9422-2017** and **CRM-M-9466-2017(O&M)** as common question of fact of law arise therein. The order impugned in both the petitions is also one and the same. Facts are being taken from **CRM-M-9466-2017**.

2. Sometimes in the year 2005, advertisements were issued in various newspapers by Star International College, Ludhiana and Carrier College, Ludhiana, offering courses like B.A., B. Ed., E.T.T., M.A. etc. Star International College, Ludhiana was run by one Chander Mohan whereas Carrier College, Ludhiana was run by one Prab Kiran Singh. The petitioners were interested in joining the E.T.T. Course and therefore, some of them took admission to Star International College, Ludhiana, whereas others joined Carrier College, Ludhiana through aforementioned Chander Mohan and Prab Kiran Singh respectively. At the time of seeking admission they were told that the course was being run through distance education programme and that the examination would be conducted at Ludhiana itself. Said Chander Mohan and Prab Kiran Singh also informed the petitioner that their institutions were affiliated with Bihar University and other recognized institutions in Bihar.

3. Although the petitioners had been told at the time of taking admission that examination would be conducted at Ludhiana, some of them were taken to Bihar for the examination, arrangements for which were made by aforesaid Chander Mohan and Prab Kiran Singh. Some of the petitioners however, appeared for their examination in Ludhiana itself. In October 2007, certificates were handed over personally by Chander Mohan of Star International College to the students of the said College, whereas others received their certificates by post from Prab Kiran Singh.

4. In the year 2008, the Government of Punjab advertised posts of E.T.T. Teachers under the Sarv Sikhia Abhian. The petitioners applied for the said posts and were selected. Appointment letters were issued in December 2008. It appears that sometime in the year 2010 the Director, Sarv Sikhia Abhian came to know that

the certificates submitted by the petitioners were bogus. Thus, their services were terminated on different dates in July-August 2011. Immediately after the termination of their services, the petitioners contacted their respective Colleges through e-mail and were informed that the certificates were in fact genuine and that there appeared to be some misunderstanding on the part of the Director, Sarv Sikhia Abhian.

5. On the basis of a written communication sent by the Director, Sarv Sikhia Abhian, Authority, Punjab, FIR No.85, dated 11.08.2011 was registered, under sections 420/465/467/468/471 IPC, at Police Station, Mataur, District SAS Nagar. Some of the petitioners went to the office of aforesaid Chander Mohan to speak about the bogus certificates issued by him but he got an FIR No.240 dated 26.09.2011, registered against them at Police Station, Division No.5, Ludhiana City, under Sections 323/324/506/341/34 IPC. It is another matter that the petitioners named in the said FIR were honourably acquitted vide the judgment dated 27.04.2016, passed by the Judicial Magistrate Ist Class, Ludhiana. Meanwhile, some of the petitioners had submitted a representation dated 20.09.2011 to I.G.P., Zonal-I, Patiala, for getting an inquiry conducted into FIR No.85, dated 11.08.2011. A detailed enquiry was got conducted through Deputy Superintendent of Police, City-1, SAS Nagar, who submitted his report dated 26.02.2012 exonerating the petitioners of any criminal conduct. A finding was returned that Chander Mohan, Prab Kiran Singh and one Gurdeep Singh Gosal and his wife Kuldeep Kaur had opened colleges in Ludhiana in connivance with Deepak Kumar @ Rahul @ Gian Chand Chaudhary of Patna and had duped innocent students of lacs of rupees after inducing them to join their fake courses. Accordingly, SHO, Police Station, Mataur, was advised to arrest the said persons

and complete investigation. Thereafter, the statements of the petitioners were recorded under section 161 Cr.P.C. and final report dated 17.03.2013 was presented. In this report, the petitioners were named as prosecution witnesses and were kept in column No.2.

6. The charges were framed against the accused persons i.e. Chander Mohan, Prab Kiran Singh etc vide order dated 01.04.2014 and the trial commenced against the said persons. On 08.07.2014, Sushma Sharma, Director, Sarv Sikhia Abhian, Punjab was examined as PW-1 and she reiterated her complaint made to the Police *verbatim*. This led to filing of application dated 24.02.2015 under section 319 Cr.P.C. for summoning the petitioners as additional accused. Reliance therein was placed on the statement of PW1-Sushma Sharma. Replies were filed by the petitioners and the application was decided vide the order dated 27.08.2015, a copy of which has been annexed as Annexure P-9. The application was allowed and the petitioners were summoned as additional accused. Relevant part of the said order is being reproduced below:-

“ The Hon'ble Apex Court in Hardeep Singh Vs. State of Punjab 2014, has settled the law relating to summoning of additional accused u/s 319 CrPC. The stage of inquiry and trial upon cognizance being taken of an offence is a proper stage of invoking power under section 319 CrPC. The degree of satisfaction required is the same as required in framing of a charge.

After hearing the counsels for the parties I am of the considered opinion that there appear to be sufficient and cogent grounds for summoning the accused listed in the application as additional accused. The complainant Sushma Sharma in her complaint

has clearly stated the name of the candidates who had procured the job on the basis of their forged certificates and reiterated the same in her examination in chief before this court. Thus she has been consistent in her version which imparts genuinity to her version. Therefore, the court is satisfied with the evidence recorded on oath of Sushma Sharma as PW1 and hence, the following accused:”

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7. Leaned counsel have informed that since there was no stay of proceedings before the learned trial Court during the pendency of this petition, charges have been framed against the petitioners as well under sections 420, 465 467, 468, 471, 201, 120-B IPC. The same have been challenged by way of a separate petition.

8. Learned counsel for the petitioners have submitted that the impugned order is liable to be set aside on the short ground of being non-speaking. The learned trial Court failed to take into consideration final report under section 173 Cr. P.C. and documents filed therewith and has merely gone by the statement of PW-1, which is *verbatim* reproduction of the Police complaint made by her. Although judgment of Hon'ble the Supreme Court of India in **Hardeep Singh Vs. State of Punjab 2014(1)R.C.R(Criminal)623** has been referred in the order but the principles laid down therein as well as applicability thereof in the facts and circumstances of this case have not been discussed. It is their submission that in fact the ratio of judgement of **Hardeep Singh** (supra) supports the case of the petitioners. It is further submitted that the petitioners are the only witnesses against Chander Mohan etc (persons who opened the colleges for issuance of fake degrees) and in case they are cited as accused persons, the real culprits i.e. Chander Mohan

etc would go scot free as there would not be evidence against them.

9. The submissions of learned counsel for the petitioner have been forcefully rebutted by learned State counsel. He submits that the concerned authority verified certificates submitted by the petitioners from Bihar University and it has been confirmed that the said certificates are bogus. Since the petitioners have used forged documents for obtaining public employment, they are liable to be proceeded against criminally. A prima facie case is made out against the petitioners on the basis of statement of PW-1 and therefore, the learned trial Court was justified in summoning them as an additional accused.

10. The Constitution Bench in **Hardeep Singh** (supra) has held as follows:-

“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 unrebutted, 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.”

11. The said judgment has been considered by the Supreme Court of India in **Brijendra Singh and others Vs. State of Rajasthan** in **Criminal appeal No.763 of 2017**, decided on 22.04.2017 and it has been held as follows:-

In Hardeep Singh’s case, the Constitution Bench has also settled the controversy on the issue as to whether the word ‘evidence’ used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and indicates the evidence collected during investigation or the word ‘evidence’ is limited to the evidence recorded during trial. It is held that it is that material, after cognizance is taken by the Court, that is available to it while making an inquiry into or trying an offence, which the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the Court. The word ‘evidence’ has to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. It means that the power to proceed against any person after summoning him can be exercised on the basis of any such material as brought forth before it. At the same time, this Court cautioned that the duty and obligation of the Court becomes more onerous to invoke such powers consciously on such material after evidence has been led during trial. The Court also clarified that Civil Appeal No. 763 of 2017 Page 13 of 20 ‘evidence’ under Section 319 Cr.P.C. could even be examination-in-chief and the Court is not required to wait till such evidence is tested on cross-examination, as it is the satisfaction of the Court which can be gathered from the reasons recorded by the Court in respect of

complicity of some other person(s) not facing trial in the offence.

12. It is thus, clear that while deciding an application under section 319 Cr.P.C., the Court can take into consideration material brought before it in the course of any enquiry before commencement of the trial and statements of witnesses recorded during trial even though the said witnesses may not have been cross-examined. Further, the satisfaction required at this stage is much stricter than prima facie case. Probability of complicity is not enough. There should be strong and cogent evidence against the person being summoned as an additional accused and the power should not be exercised in a casual manner.

13. The question, therefore, is whether the tests prescribed by law for exercise of jurisdiction under section 319 Cr.P.C. are satisfied in the facts and circumstances of this case?

14. The report under section 173 Cr.P.C., unequivocally supports the petitioners. So does the enquiry dated 26.02.2102. PW-1 has only repeated what was stated in the complaint made by her in writing to the police. Therefore, it is not discernible what prompted the learned trial Court to summon the petitioner as additional accused. The evidence on record is not enough to make out a case of complicity against the petitioner. Learned trial Court has exercised its jurisdiction under section 319 Cr.P.C. in a most casual and cavalier manner and I dare say without application of mind. It has lost sight of the fact that in case the petitioners are named as co-accused, the real culprits would be let off, whereas the evidence on record indicates that the persons who advertised grant of degrees are the ones who need to be prosecuted for uncovering the truth. Thus, the order dated 27.08.2015 (Annexure P-9) is not sustainable in law and is quashed.

15. The petitions are allowed. The learned trial Court is directed to proceed with the trial and complete the same within a period of one year from the date of passing of this order.

April 17 , 2018
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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No