

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Revision No. 2414 of 2018

Date of Decision: November 27, 2018

Narinder Singh

.....Petitioner

versus

Union Territory, Chandigarh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Vikram Chaudhary, Sr. Advocate with
Ms. Isha Goyal, Advocate
for the petitioner

Dr. Sukant Gupta, Addl.P.P., U.T., Chandigarh.

Mr. R. Kartikeya, Advocate
for respondent No. 2

Mr. Ankit Chaudhary, Advocate
for respondent No. 3

Sudhir Mittal, J.

Applicant–accused Narinder Singh filed an application under Sections 190/193 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.) read with Section 36-A(1)(d) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the Act') and Section 319(1)(3) Cr.P.C. and all other enabling provisions including *suo moto* powers vested in the Court to summon (a) Bhagwan Singh son of Naryan Singh and (b) Sukhbir Singh Shergill son of Kartar Singh as additional accused. The said application has been dismissed vide order dated 31.05.2018 passed by the Additional Sessions Judge, Chandigarh.

2. FIR No. 83 dated 16.06.2016 was registered at Police Station Maloya, Chandigarh, under Sections 18, 29 of the Act and Sections 489-C, 201, 212 read with Section 120-B IPC because the police had set up naka on the basis of

information that vehicle No. CH-01 AE-0224 of blue colour was approaching from Sector 38 West, light point and going towards DMC Colony carrying intoxicant substance i.e. opium. The said vehicle was intercepted and the driver disclosed his name as Bhagwan Singh son of Naryan Singh. The car was searched in the presence of a Gazetted Officer and a black coloured bag was found on the seat adjoining the driver's seat which contained files. These files concealed 2.6 Kg opium. The driver could not produce any licence or permit for the said opium. On the back seat of the car another thick file cover was found which contained seven bundles of currency notes totalling Rs. 15 lacs. The opium, currency notes and the car were taken into possession vide separate memos. Bhagwan Singh son of Naryan Singh was arrested.

3. After investigation, challan under Section 173(2) Cr.P.C. was presented in Court. Bhagwan Singh son of Naryan Singh was got released from custody on 18.07.2016 as after investigation it was found that he was innocent. According to the challan, Narinder Singh (petitioner) and Navjot Singh Dhaliwal in conspiracy with the other accused persons conveyed to Sukhbir Singh Shergill that certain material would be made available to him, which would help him in his litigation with J.S. Dhaliwal father of Navjot Singh Dhaliwal and, accordingly, Bhagwan Singh was sent by Sukhbir Singh Shergill to collect the material. One lady placed files in the car of Bhagwan Singh. The said files contained counterfeit currency and opium. All this was done under a conspiracy to frame Sukhbir Singh Dhaliwal.

4. Consequently, the petitioner – Narinder Singh and his co-accused are being tried. Out of 47 prosecution witnesses, 22 stand examined and the trial is at an advanced stage.

5. At this stage, the application aforementioned was filed with the grievance that after registration of the FIR the prosecution has taken a U turn and

has discharged Bhagwan Singh and his employer Sukhbir Singh Shergill. Instead,

the accused persons are being prosecuted unnecessarily and in a highly unjustified manner. It is averred that the documents attached with the challan unambiguously show that opium and counterfeit currency was recovered from Bhagwan Singh. Said Bhagwan Singh was acting on the dictates of Sukhbir Singh Shergill. During the course of the trial, statement of Satbir Singh PW-6, Sushil Narang PW-7, Bhagwan Singh PW-14, ASI Vidya Nand PW-17, Constable Varinder PW-21 and Dr. Akhilesh Kumar PW-22 have been recorded which show that Bhagwan Singh and Sukhbir Singh Shergill have committed the various offences mentioned in the FIR. The evidence on record is corroborated by the documents submitted with the challan and, thus, Bhagwan Singh and Sukhbir Singh Shergill be tried as additional accused.

6. Learned senior counsel for the petitioner has submitted that the 'evidence' available on record points towards the culpability of Bhagwan Singh and Sukhbir Singh Shergill. Yet, the learned trial Court has dismissed the application on illegal and untenable grounds. The order is cryptic and non-speaking. The 'evidence' brought to the notice of the trial Court in the application has not been discussed and the trial has been prejudged while passing the impugned order by the observation of the trial Court that -

“in case present application is allowed and both the star witnesses are summoned as accused, then whole of prosecution version shall be disbelieved, which is not at all required at this stage as it would amount to disbelieve the whole of investigation.”

7. Reliance has been placed upon ***Hardeep Singh vs. State of Punjab and others, 2014(1) RCR(Criminal) 623*** and ***Dharam Pal and others vs. State of Haryana and another, 2013(3) RCR(Criminal) 787.***

son of Narayan Singh controvert the arguments raised on behalf of the petitioner. It is contended that the application is motivated and has been filed with the aim of delaying the trial and at a belated stage. The impugned order is neither cryptic nor non-speaking. Learned trial Court has correctly held that the 'evidence' sought to be relied upon by the petitioner does not fulfill the requirements of law as laid down in the case of ***Hardeep Singh (supra)*** and thus, there is no error in the impugned order. Reliance is placed upon ***S. Mohammed Ispahani vs. Yogendra Chandak and others, (2017) 16 Supreme Court Cases 226.***

9. In the case of ***Dharam Pal (supra)***, the Supreme Court has held that while committing the case under Section 193 Cr.P.C., the Magistrate has power to summon the persons mentioned in column No. 2 of the final report under Section 173(2) Cr.P.C. The Court of Sessions can also summon such persons after the case has been committed to it in exercise of original jurisdiction under Section 193 Cr.P.C. The stage of commitment and of taking cognizance by the learned Sessions Court/Judge Special Court, having long gone past, the said judgment is of no assistance to the petitioner.

10. This brings me to the judgment of ***Hardeep Singh's case (supra)***. This judgment lays down the conditions/circumstances under which the Court may exercise its powers to summon persons to stand trial with the accused. Such persons may be the persons initially named in the FIR but kept in column No. 2 in the final report under Section 173(2) Cr.P.C. or any other person. This power may be exercised in case the concerned Court is satisfied on the basis of the 'evidence' produced before it, that such a person is also liable to be summoned to stand trial alongwith with the other accused. The language of the provision, as interpreted in various decisions, suggests that the power is to be used sparingly and in a circumspect manner. The Court will not turn against any person, who appears to

suggests the involvement of such a person and if the evidence remains unrebutted, it may lead to the conviction of the person.

11. In *Michael Machado and another vs. Central Bureau of Investigation, 2000(2) RCR(Criminal) 75*, Section 319 Cr.P.C. has been examined by the Supreme Court and held as under:-

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11. *The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.*

12. *But even then, what is conferred on the court is only a discretion as could be discerned from the words the court may proceed against such person. The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons.*

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14. *The Court while deciding whether to invoke the power under Section 319 of the Code, must address itself about the other constraints imposed by the first limb of sub- section (4), that proceedings in respect of newly added persons shall be commenced*

afresh and the witnesses re-examined. The whole proceedings must be re-commenced from the beginning of the trial, summon the witnesses once again and examine them and cross-examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are quite a large in number the court must seriously consider whether the objects sought to be achieved by such exercise is worth wasting the whole labour already undertaken. Unless the court is hopeful that there is reasonable prospect of the case as against the newly brought accused ending in conviction of the offence concerned we would say that the court should refrain from adopting such a course of action.

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12. The aforementioned case has been referred to in the case of ***Hardeep Singh's case (supra)***. In this case Section 319 Cr.P.C. has been re-examined by a five Judges Bench of the Supreme Court. The following questions were framed for being answered :-

“5. On the consideration of the submissions raised and in view of what has been noted above, the following questions are to be answered by this Bench:

(i) What is the stage at which power under Section 319 Cr.P.C. can be exercised?

(ii) Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

(iii) Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

(iv) What is the nature of the satisfaction required to invoke the power

under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319(1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood convicted?

(v) Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charged or who have been discharged?”

13. One of the questions raised in the case was the meaning of the word 'evidence' and whether it includes evidence collected during investigation, this question has been answered as follows:-

“71. It is, therefore, clear that the word “evidence” in Section 319 Cr.P.C. means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the Court to decide whether power under Section 319 Cr.P.C. is to be exercised and not on the basis of material collected during investigation.”

14. It has further been held as under:-

“77. It is, therefore, not any material that can be utilised, rather it is that material after cognizance is taken by a court, that is available to it while making an inquiry into or trying an offence, that the court can utilize or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the Court, who may be on the basis of such material, treated to be an accomplice in the commission of the offence. The inference that can be drawn is that material which is not exactly evidence recorded before the court, but is a material collected by the court, can be utilised to corroborate

evidence already recorded for the purpose of summoning any other person, other than the accused.”

15. Thus, the word 'evidence' used in Section 319 Cr.P.C. is documentary evidence produced and proved before the Court in accordance with law and oral evidence not necessarily tested by cross-examination, produced before it. The word 'evidence' has been construed broadly, to even include information collected during an enquiry conducted by the Court. However, it does not include information regarding facts collected during the course of investigation. The same may, however, be used for corroborative purposes.

16. In the case of ***S. Mohammed Ispahani (supra)***, two Judges Bench of the Supreme Court has held as follows after examining judgment passed in ***Hardeep Singh's case (supra)***:-

“Discussing the salient features from the aforesaid narration and the manner in which the case proceeded, Mr. Sidharth Luthra, learned senior counsel appearing for the three appellants/landlords, submitted that these appellants as landlords of the premises in-question had obtained the decree of eviction against de facto complainant and had taken steps to get the said decree executed by adopting lawful means. For this purpose, they had filed the execution petition in which warrants of possession were given in their favour by the executing court and the bailiff was appointed for visiting the premises in-question to execute the warrants of possession. He emphasised that though de facto complaint had filed the appeal against the order of eviction but he was unsuccessful in getting the stay of the execution as his attempts in this behalf up to this Court had failed. Therefore, argued the learned senior counsel, the steps taken by the appellants/landlords were perfectly legal and in accordance with the lawful procedure. Without admitting the incident of July 24, 2007, as alleged by the de facto complainant, Mr. Luthra further submitted that even the de facto complainant or complainant were not present at the

spot at the time of the incident and were away to the High Court which fact has been admitted by them in the FIR No. 3/2008. Likewise, it was also an admitted position that all the three appellants/landlords were not present at the spot. Further, a comprehensive investigation was carried out by the police wherein no involvement of the appellants was found and, therefore, they were not charge sheeted. He further pointed out that when the charge sheet was filed without implicating the appellants, there was no protest petition filed by the de facto complainant or the complainant, who were well aware of the contents of the charge sheet. In these circumstances, argued the learned senior counsel, that the trial court rightly dismissed the application under Section 319 of the Cr.P.C. which was a belated attempt on the part of the complainant to implicate the appellants, inasmuch as that application was filed much after the complainant was examined as PW-1, and by that time the prosecution had even closed its evidence.”

17. Succinctly put, the Court may choose to summon any other person to stand trial alongwith the accused persons provided, on the basis of oral or documentary evidence produced before the Court during the trial, it feels satisfied that such other person also appears to have committed the offence and can be tried alongwith the other accused. The satisfaction of the Court has to be to an extent that the Court feels that such person is guilty of the offence provided he is unable to rebut the evidence produced on record. The stage of the trial is also relevant fact as summoning of an additional accused would involve a *de novo* trial. It is also essential that the Court should be able to try the additional accused alongwith the accused being tried.

18. The question therefore is whether the aforementioned parameters stand satisfied in this case?

19. The 'evidence' relied upon by the petitioner in this case is the

Constable Varinder under Section 161 Cr.P.C., statement of Inspector Ram Rattan Sharma under Section 161 Cr.P.C. and statement of SI Sarwan Ram under Section 161 Cr.P.C. apart from the statements of Satbir Singh PW-6, Sushil Narang PW-7, Bhagwan Singh PW-14, ASI Vidya Nand PW-17, Constable Varinder PW-21 and Dr. Akhlesh Kumar PW-22. In addition, documentary evidence such as seizure memo of bag and files (Ex. P-20), unscaled map of the spot (Ex. P-21) notice under Section 42 of the Act (Ex. P-26), notice under Section 50 of the Act (Ex. P-27), personal search memo (Ex. P-22) and CFSL report (Ex. P-28) have also been relied upon. A perusal of the statements of various witnesses show that Sukhbir Singh Shergill had sent Bhagwan Singh on 16.06.2016 for collecting some files. A lady placed files in the car of Bhagwan Singh and the car was intercepted by the police. The car and Bhagwan Singh were searched and 2.6 Kg opium and counterfeit currency notes were recovered. The files from the which the contraband and currency notes were recovered related to the matter of Sukhbir Singh Shergill. The documentary evidence such as seizure memos, unscaled maps of the spot, notices under Section 42 and 50 of the Act, search Memo and CFSL report dated 22.03.2017 also show that the contraband was recovered from Bhagwan Singh and that the files placed in the car of Bhagwan Singh pertained to the matter of Sukhbir Singh Shergill. Thus, the evidence on record is in accordance with the case of the prosecution that recovery was infact made from the car of Bhagwan Singh and that he had been sent by Sukhbir Singh Shergill to collect certain files. Does this render the theory of the prosecution that the Bhagwan Singh and Sukhbir Singh Shergill had been implicated by the accused persons, as false ? The unequivocal answer to this question is 'NO'. The statement of Bhagwan Singh (PW-14) may not record that he and Sukhbir Singh Shergill had been falsely implicated but that is not sufficient to discard the case of the prosecution. In any case, while exercising

power under Section 319 Cr.P.C. the Court is not concerned with whether the

prosecution has failed to prove its case. The concern of the Court at this stage is only to see whether some other person can also be tried alongwith those being tried already. The evidence on record does not indicate so. The trial Court was justified in holding that the evidence on record is not sufficient to hold that Bhagwan Singh and Sukhbir Singh Shergill are guilty, provided they are unable to rebut the evidence on record against them. It was also justified in holding that summoning of Bhagwan Singh and Sukhbir Singh Shergill would amount to debunking the case of the prosecution because if the said persons are to be summoned, they can not be tried alongwith the accused being tried already, because the prosecution can not go against the final report under Section 173(2) Cr.P.C. The trial has to be in accordance with the direction indicated in the final report. The observation of the trial Court in this regard does not amount to prejudging in the case. Ultimately, if the case of the prosecution fails and on the basis of the entire evidence on record the trial Court is satisfied that Bhagwan Singh and Sukhbir Singh Shergill are liable to be prosecuted, it has sufficient powers to direct so.

20. In the light of the parameters laid down in the various judgments referred to hereinabove, the trial Court was justified in not summoning Bhagwan Singh and Sukhbir Singh Shergill as additional accused. The findings arrived at by the trial Court are just and legal. It may be, that the trial Court has not referred to the evidence pointed out in the application, to lay the order open to the allegation of being cryptic and non-speaking. Thus, I have referred to every piece of evidence referred to in the application, while recording the findings aforementioned.

21. The petition has no merit and is dismissed. The interim orders passed during the pendency of this petition have, thus, come to an end.

November 27, 2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No