IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i) CRR No.2439 of 2018 (O&M)

Sarabjit Singh

...Petitioner

VERSUS

The State of Punjab and another

...Respondents

(ii) CRR No.3062 of 2018 (O&M)

Jaswinder Kaur

...Petitioner

VERSUS

State of Punjab and another

...Respondents

Date of Decision: October 26, 2018

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.D.V.Sharma, Sr. Advocate with
Mr.Tushar Sharma, Advocate
for the petitioners.

Ms.Monika Jalota, DAG, Punjab
for the respondent-State.

Mr.S.S.Rangi and Mr.S.S.Dhaliwal, Advocate
for respondent No.2.

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INDERJIT SINGH, J.

CRM No.25881 and 31976 of 2018

Heard.

For the reasons mentioned in the applications, the same are allowed. Delay of 107 and 181 days in filing the revision petitions respectively, is condoned.

CRM No.37941 and 37940 of 2018

Heard.

The application are allowed. Applicant Kaushal Khajuria is impleaded as respondent No.2. Amended Memo of Parties is taken on record in both the cases.

Main cases

The present revision petitions have been filed by the petitioners against respondents, challenging the order dated 09.01.2018 passed by learned Addl. Sessions Judge, Pathankot, vide which application under Section 319 Cr.P.C. for summoning petitioners as additional accused was allowed.

From the record, I find that challan was presented in case FIR No.20 dated 16.12.2014 under Sections 420, 409, 467, 488, 471, 120-B IPC and Section 13 of the Prevention of Corruption Act. During the course of enquiry, it was found that Kaushal Khajuria from 2006 till May 2012, while being posted as Branch Manager, in connivance with Rajwinder Singh, Patwari, Randhir Singh, Secretary, committed fraud to the tune of ₹70-80 lakhs. There were about 89 RCC sanctioned Limits (loans) out of which 14 RCC limits were allowed on the basis of forged documents. The details/names were mentioned and it was found by the Inquiry Officer that 14 loanees committed fraud to the tune of ₹82 lakhs. The sale deeds were also produced regarding which the entry was made and it was found that sale deeds were forged and entries were never made in the revenue record regarding lien in favour of the bank, as the owners who claimed themselves to be owners, were not in fact the original owners and had no title.

The accused has filed application for summoning Yashpal, Tehsildar, Karamljit Singh Randhawa, Tehsildar, Ram Anand, Tehsildar along with other accused. Earlier also, an application was moved for summoning Jaswinder Kaur, Pargat Singh husband of Jaswinder Kaur, Sarabjit Singh District Manager and Karan Singh, Branch Manager, as co-accused in the present case.

Learned trial Court, after discussing the evidence, summoned present petitioners Sarabjit Singh and Jaswinder Kaur to face trial along with other co-accused under Sections 409, 420, 467, 468, 471, 120-B IPC and Section 13(1)(d) of the Prevention of Corruption Act vide impugned order dated 09.01.2018.

Aggrieved from the above-said order dated 09.01.2018, both the revisions petitions have been filed.

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

From the perusal of the impugned order, I find that learned trial Court held that from the evidence it is clear that there is concurrence on the part of Sarabjit Singh, which is revealed from the very fact that on the same day, dairy loan was advanced to the tune of ₹20 lakhs and amount of same was not used for dairy purposes but it was used for transferring the same in the account of other loanees i.e. the loan which was advanced by the District Manager to other different persons with whom Jaswinder Kaur was having no relationship. Jaswinder Kaur was allowed loan of ₹40 lakh meaning thereby, out of ₹80 lakhs advanced to Jaswinder Kaur, she utilized more than ₹40 lakhs from the said loan amount and defaulted in sum of ₹46,46,411.05. However, the loan document submitted were genuine but the very fact that the amount received was supposed to be disbursed for purchase of different items as an agricultural loan, which has a lesser rate of interest and same was used for making payment of different loans, which were released in favour of different accused, who obtained the loan and even some of the accused also sold property in her favour, which has come on record. Learned trial Court held that there is element of conspiracy on the part of Jaswinder Kaur and Sarabjit Singh.

The perusal of the record shows that the petitioner Sarabjit Singh is a public servant and this fact is also admitted by learned State counsel as well as learned counsel for respondent No.2. It is also admitted that no sanction has been received qua petitioner Sarabjit Singh, District Manager, so far.

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 Sarabjit Singh cannot be summoned as additional accused by the Court under Section 319 Cr.P.C. Therefore, impugned order dated 09.01.2018 passed by learned Addl. Sessions Judge, Pathankot, is not as per law and the same is set aside qua petitioner Sarabjit Singh.

As regarding petitioner Jaswinder Kaur, I find that she is not a public servant, therefore, charge under Section 13 (1)(d) of the Prevention of Corruption Act and Section 409 IPC, cannot be framed against her. It is in order itself that she has obtained the loan on the basis of genuine document. There is no cogent evidence to prove the offence under Sections 467, 468 and 471 IPC. As regarding cheating, I find that Jaswinder Kaur has applied for agricultural loan and she used it for other purpose. At the time of arguments, learned counsel submitted that loan has been returned whereas learned counsel for the respondent states that loan is still to be paid. In no way, using the loan amount for other purposes, amounts to cheating. At the most, it is breach of terms and conditions of the loan agreement and if any loanee is not using the loan for the purpose for which it was taken, then the bank has options to recover the total amount immediately or can charge interest on higher rates etc. as per terms and conditions of the loan agreement but in no way, it can be held that it amounts to embezzlement. It has been brought to the notice of this Court that Jaswinder Kaur, who has been summoned, is a prosecution witness in this case.

The perusal of the record shows that it does not appear to this Court that present petitioner is involved in the commission of the offence as she has not obtained loan by forging any documents etc. As per the allegations, petitioner Jaswinder Kaur connived with petitioner Sarabjit Singh. As already held above, the impugned order summoning petitioner Sarabjit Singh has also been set aside.

In view of above discussion, I find merit in both the revision petitions and the same are allowed. The impugned order dated 09.01.2018 passed by learned Addl. Sessions Judge, Pathankot, is set aside qua the petitioners.

October 26, 2018 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned	**Yes**
Whether reportable	**No**