

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

CRR No.3107 of 2018 (O&M)
Date of Decision: September 14, 2018

Anand Parkash Gupta

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Lalit Pardhan, Advocate
for the petitioner.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner against State of Haryana and other respondents, challenging the order dated 18.08.2018 passed by learned Special Judge, Rewari, vide which application filed by the petitioner under Section 319 Cr.P.C. for summoning Jitender Kumar Hooda and Anil Kumar as an additional accused was dismissed.

It is stated in the application that PW-1 Anand Parkash Gupta has deposed in his examination-in-chief that he has worked for installation of CCTV cameras, intercom facility, internet working along with electric works in new building of Public Health Department, Kosli, as per instructions of Jitender Kumar Hooda, the then Executive Engineer. It is further stated that total amount of above-said work was ₹9 lakhs out of which, ₹6 lakhs has been paid to him in the month of March 2016 and

accused demanded ₹54,000/- as bribe for passing the bill of ₹6 lakhs, which

was taken by Raj Kumar, the then SDO and Dalbir Singh Boora, the then Junior Engineer from complainant's wife by visiting the shop and said that the bribe amount, ₹18,000/- will be shared by them equally including Jitender Kumar Hooda. Then, ₹3 lakhs remained to be paid for the work done. Again, Jitender Kumar Hooda asked him to contact Dalbir Singh Boora, Junior Engineer, who demanded ₹9000/- each for above-said three persons, ₹6000/- for Anil Kumar, Accounts Officer, and ₹2,500/- for Gulshan, SDC and said that only then payment will be released. A raid was conducted by the Vigilance Bureau. Other persons were apprehended.

An application under Section 319 Cr.P.C. was filed for summoning Jitender Kumar Hooda and Anil Kumar as additional accused. Learned Special Judge, Rewari, vide impugned order dated 18.08.2018, dismissed the application. Aggrieved from this order, present revision petition has been filed.

I have heard learned counsel for the petitioners and have gone through the record.

The perusal of the record shows that both the private respondents to whom the complainant wants to summon as additional accused, are public servants and this fact is also admitted by learned counsel for the petitioner. It is also admitted by learned counsel for the petitioner that no sanction has been received qua Jitender Kumar Hooda, Executive Engineer and Anil Kumar, Accounts Officer, so far. It is also clear that both these private respondents Jitender Kumar Hooda and Anil Kumar were found innocent during investigation. Learned trial Court, on the basis of law laid down by the Hon'ble Supreme Court held that sanction under

Section 19 of the Prevention of Corruption Act is necessary before taking

cognizance against the public servants.

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 referred 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, private respondents cannot be summoned as addition accused by the Court under Section 319 Cr.P.C.

In view of the above discussion, I find that impugned order

law and does not require any interference from this Court.

Therefore, finding no merit in the present revision petition, the same is dismissed.

September 14, 2018
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes