

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Revision No.544 of 2018

.....

Date of decision:9.8.2018

Vijayraje

...Petitioner

v.

State of Haryana and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Chanderhas Yadav, Advocate for the petitioner.

Mr. B.S. Virk, Deputy Advocate General, Haryana
for the respondent-State.

Mr. Sumit Sangram, Advocate for the complainant-respondent
No.2.

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Inderjit Singh, J.

This criminal revision petition has been filed under Section 401 Cr.P.C. challenging the impugned judgment dated 15.1.2018 passed by learned Sessions Judge/Judge, Special Court, Jhajjar, whereby the application under Section 319 Cr.P.C. filed by the prosecution for summoning Vijaraje wife of Vikas, as additional accused to face trial along with his co-accused Poonam, has been allowed and she has been summoned to face trial in case FIR No.26 dated 19.7.2016 registered for the offences under Sections 7 and 13 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act') at Police Station State Vigilance

Bureau, Bahadurgarh, District Jhajjar, Haryana.

Notice of motion has been issued in this case.

Mr. B.S. Virk, learned Deputy Advocate General, Haryana, has appeared on behalf of the respondent-State and Mr. Sumit Sangram, learned Advocate has appeared for the complainant-respondent No.2 and contested this revision petition.

I have heard learned counsel for the revision petitioner as well as learned Deputy Advocate General, Haryana and learned counsel for the complainant-respondent No.2 and have gone through the record.

As per the impugned order dated 15.1.2018, the learned Sessions Judge/Judge, Special Court, Jhajjar, has summoned the present petitioner Vijayraje, who was posted as Drugs Control Officer, Jhajjar, as additional accused to face trial along with co-accused on an application filed under Section 319 Cr.P.C.

Learned counsel for the petitioner by adverting to the final investigation report placed on record at Annexure-P.5 argued that the petitioner has been found innocent on the basis of credible and cogent evidence collected by the Investigating Agency. The impugned order has been passed without any evidence having been recorded during the course of trial and which could justify exercise of power under Section 319 Cr.P.C. He has placed reliance on the law laid down by Hon'ble Supreme Court in Dilawar Singh v. Parvinder Singh @ Iqbal Singh and another, 2005 (4) R.C.R. (Criminal) 855. I have gone through the law laid down in this judgment, which fully applies to the facts of this case. The Hon'ble

Supreme Court has observed as under:-

“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 SC 828**, **State of Bihar v. Yogendra Singh AIR 1982 SC 882** and **Maharashtra State Board of Secondary Education v. Paritosh Bhupesh Kumar Sheth AIR 1984 SC 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

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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.”

As no sanction has been obtained before summoning the additional accused in this case, therefore, the order passed by the learned Sessions Judge/Judge, Special Court, Jhajjar, summoning the present petitioner under Section 319 Cr.P.C. before obtaining sanction is illegal, which is not as per law and the same is set aside.

Finding merit in the present criminal revision petition, the same is allowed.

August 9, 2018.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No