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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-2000-2019

Date of Decision : January 24, 2019

Vijaya Kundu

.... Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Gaurav Mohunta, Advocate,
and Mr. Sudhir Kashyap, Advocate,
for the petitioner.

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SHEKHER DHAWAN, J.

Present petition under Section 482 of the Code of Criminal Procedure is for quashing of order dated 16.07.2018 (Annexure P/7) whereby the petitioner was ordered to be summoned as an additional accused by invoking the powers under Section 319 Cr.P.C. in case bearing FIR No. 499 dated 16.6.2014 under Sections 406 and 420 of Indian Penal Code registered at Police Station City Jind and the order dated 21.12.2018 (Annexure P/8) passed by learned Additional Sessions Judge, Jind whereby revision petition filed by the petitioner was dismissed.

2. Facts relevant for the purpose of decision of the present petition; that process of law was set into motion as the aforesaid FIR was registered on the basis of complaint submitted by Devender Sharma,

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(respondent No.2 herein), Rakesh, Udey and Dhirender who had levelled the allegations that petitioner, Vijaya Kundu, and Pawan Sharma, Ramrai and Ravinder Kundu had obtained a sum of Rs.10,40,000/- for providing employment . In the said complaint, Ex. PW-1/A, the petitioner was named, but after investigation, challan was not presented against the petitioner and application under Section 319 Cr.P.C. was filed on that account for summoning of petitioner as an additional accused. Learned Chief Judicial Magistrate, Jind while considering the matter in its entirety i.e., report under Section 173 Cr.P.C. as well as statement made by Devender, complainant as PW-3, passed the order, Annexure P/7, for summoning of petitioner, Vijaya Kundu as an additional accused in the case.

3. Being aggrieved of passing of said order, the petitioner preferred a revision petition before the Court of Session and the same was dismissed by learned Additional Sessions Judge, Jind vide order dated 21.12.2018, Annexure P/8.

4. Learned counsel for the petitioner contended that learned Courts below have not considered the facts of the case and ignored the fact that it had come in the investigation that the petitioner was found to be innocent. More so, the petitioner is a Government JBT teacher. The said investigation in the matter was conducted by DSP, Jind and the enquiry report under Section 172 Cr.P.C. dated 2.8.2014 was prepared. During that process, statements of six persons alongwith evidence were recorded and the petitioner was found to be innocent. On that basis, final report under Section 173 Cr.P.C. was submitted before the Court and the petitioner was declared innocent. However, both the Courts below have

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completely ignored that fact while passing the orders under challenge. In support of his arguments, reliance was placed upon the judgment of Hon`ble Apex Court in **Brijendra Singh & Ors. Vs. State of Rajasthan, 2017(3) R.C.R. (Criminal) 374.**

5. Having considered the submissions made by learned counsel for the petitioner, this Court is of the considered view that there is no dispute about the basic fact that at the instance of Devender Sharma, respondent No.2 and three others, complaint Ex.PW-1/A was filed before the police in writing. In that complaint, the petitioner was also named as an accused and there were specific allegations against her. The matter was investigated but the petitioner was not arrayed as an accused and final report was submitted against other accused only. Thereafter, application under Section 319 Cr.P.C. was filed so as to summon the present petitioner as an additional accused.

6. There is no dispute on the fact and legal proposition that Section 319 Cr.P.C. confers wide powers upon learned trial Judge to summon any body as an additional accused if there is sufficient material available on the file. Needless to say, the power is to be exercised judiciously. But at the same time, Section 319 Cr.P.C. does not limit the power of the Court to restrict itself to the investigation proceedings only. Otherwise, the purpose of Section 319 Cr.P.C. is that if the investigation has not been done in a fair and proper manner, the complainant can approach the Court and learned trial Magistrate after considering the investigation proceedings as well as additional material having been placed before the court, can pass the order to summon such a person as an additional accused against whom some material comes on the file. In the

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present case, certainly by way of statement of PW-3, Devender Sharma, it had come on the file that the petitioner was also an accused along with co-accused against whom final report under Section 173 Cr.P.C. was filed and learned Magistrate has exercised the discretion lawfully vested in it judiciously. There is nothing on the record that learned Magistrate exercised the jurisdiction beyond his power or has gone beyond the record and material available on the file. Thereafter, the revisional Court has also maintained the said order and dismissed the revision petition. In such like matters, primarily it is for learned trial Judge to see whether any body else is to be summoned as an additional accused while exercising powers under Section 319 Cr.P.C. or not.

7. Even in the judgment referred and relied upon by learned counsel for the petitioner in **Brijendra Singh's case (surpa)**, it is made clear that the power under Section 319 Cr.P.C. for summoning of any person as additional accused lies with the learned trial Judge except during the state of Section 207 and 208 Cr.P.C. i.e., the committal proceedings.

8. Similar matter was before the Constitution Bench of Hon`ble Apex Court in **Hardeep Singh Vs. State of Punjab and others, 2014(3) SCC 92**, and Hon`ble Apex Court observed as under:-

“8. The constitutional mandate under Articles 20 and 21 of the Constitution of India provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the Accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the courts to ensure that the criminal administration of justice

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works properly, the law was appropriately codified and modified by the legislature under Code of Criminal Procedure indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished.

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12. Section 319 Cr.P.C. springs out of the doctrine *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr.P.C.

13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said Accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 Cr.P.C.?

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19. The court is the sole repository of justice and a duty is cast upon it to uphold the Rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an Accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.”

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9. Needless to say that it is the duty of the Court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the Court is not powerless in calling the said accused to face trial. Section 319 Cr.P.C. allows the Court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial. He can either be a person named in Column 2 of the charge sheet filed under Section 173 Cr.P.C. or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence.

10. Applying the same principle of law to the present set of facts, learned Magistrate has exercised its judicious discretion while placing reliance upon the statement on oath having been made by the complainant before the Court and the said order has already been affirmed by learned Additional Sessions Judge.

11, As such, the present petition is without any merit and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

January 24, 2019

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes