

Date of decision: March 26, 2019

....Petitioner

Hari Singh and another

....Respondents

Present: Mr. M.S. Dhami, Advocate
for the petitioner.

Mr. Abhay Gupta, Advocate for
Mr. Amar Vivek, Advocate
for respondent No.1.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer made in the petition is for setting aside the order dated 16.12.2014 (Annexure P-4) passed by the Revisional Court vide which the order dated 14.3.2014 passed by the trial Court allowing the application under Section 319 Cr.P.C. summoning respondent No.1 as additional accused was set aside in case FIR No.25 dated 3.4.2008 under Sections 419, 420, 465, 467, 468 and 471/34 IPC registered at Police Station Kathgarh, District SBS Nagar.

Brief facts of the case are that the petitioner/complainant got the aforementioned FIR registered with the allegation that respondent No.1-Hari Singh was posted as a Patwari of the village and he, in

conspiracy with the other accused persons, had entered the mutation of two forged Will dated 13.4.21985 and 15.4.1991 regarding the property of Rimal Devi and Jagir Singh. Thereafter, mutation Nos.6294 and 6295 was sanctioned in favour of the beneficiaries of the Will, namely, Jagroop Singh and Bhagwan Singh. Thereafter, the police investigated the matter and submitted the challan against the accused persons, Jagroop, Bhagwan Singh and Nisha Ram and kept the petitioner Hari Singh along with Mohinder Singh, Kanungo and Rajiv Paul, Tehsildar in column No.2. Thereafter, the charge were framed after the prosecution led some evidence an application was moved under Section 319 Cr.P.C. based on the statement of PW9 Dharam Pal, Office Kanungo to summon the petitioner and aforesaid Mohinder Singh and Rajiv Paul as additional accused. The said application was allowed vide order dated 14.5.2013. Thereafter, Hari Singh preferred the revision before the revisional Court which was allowed vide order dated 23.1.2014 and the case was remanded back to the trial Court to decide the application under Section 319 Cr.P.C. afresh.

The trial Court vide impugned order dated 14.3.2014 again allowed the application observing that PW9 Dharam Pal, Office Kanungo has stated that the disputed mutation Nos. 6294 (Ex.PW9/A) and 6295 (Ex.PW9/B) were sanctioned by Rajiv Paul, Tehsildar on the verification of Mohinder Singh, Kanungo and on the entry made by petitioner-Hari Singh, Patwari and, therefore, there are sufficient grounds to summon them. Hari Singh, Patwari again filed a revision before the Court of

Sessions which was allowed vide impugned order dated 16.12.2014. The operative part of the said order reads as under :-

“10....Even if the concept of Section 319 Cr.P.C. has been given re-look by the Apex Court in two of its recent judgments in Dharam Pal Vs. State of Haryana, 2013 AIR (SC) (Criminal) 1957, and Hardeep Singh Vs. State of Punjab, 2014(3) SCC 92, decided by another Constitution Bench of Hon'ble Apex Court on 10.1.2014 the prosecution cannot derive much advantage therefrom as basic requirement for asking an accused to stand his trial under Section 319 Cr.P.C. is still the same, satisfaction of the Court on the parameters already deduced herein above. These judgments have reiterated as to at what stage provisions of Section 319 Cr.P.C. can be invoked and by whom. Can only for another person be asked to undergo vagaries of a Criminal Trial? The answer has to be emphatically in the negative.

11. Viewed thus, role said to be played by Hari Singh, the revision petitioner in the entire episode has to be appraised on the touch stone of law, noticed herein above. I have gone through both of mutations No.6294 and 6295 to find that the only role played by Hari Singh, revision petitioner, is that when Jagroop Singh brought to him certificate of death of Rumali Devi and Jagir Singh along with copies of their Wills, he merely entered his request and forwarded it further to competent authorities for further action. Thereafter the matter was dealt with by the Qanoongoh and thereafter by the Tehsildar. Apart from that, there is no other allegation against Hari Singh,

notwithstanding berserk but unsubstantiated use of word conspiracy. It is not the case of prosecution, either that pedigree table drawn by Hari Singh, while forwarding case to the higher authorities is wrong.

12. It was duty of the revenue Halqa Patwari to entertain request for mutation made before him and forward it to higher authorities for appropriate authorities and when he just performed his official duties he cannot be said to have committed any offence.

13. Consequently, the revision is allowed and the impugned order summoning the accused revision petitioner is set aside being not tenable and all the consequent proceedings against him be taken as redundant.

14. Trial Court records be placed before it on 8.2.2015 for proceeding further with the matter. Parties through their counsel, are directed to appear before learned trial Court on 8.2.2015. Records of revision be consigned and trial Court records be returned forthwith.”

The petitioner has filed the present petition against the aforesaid order.

It is worth noticing here that this petition was filed in 2015 and the passing of the final order was stayed vide order dated 16.1.2015.

Counsel for the petitioner, the learned State counsel as well as the counsel appearing for respondent No.1-Hari Singh are *ad idem* that the entire evidence has concluded and the case is fixed for final arguments

and the trial Court is awaiting the outcome of the present petition.

Counsel for the petitioner has argued that since it had come in the statement of PW9, Office Kanungo that on the basis of two fake Wills the petitioner entered the disputed two mutations which were verified by Mohinder Singh, Kanungo and ultimately mutation was sanctioned of Rajiv Paul, Tehsildar. Therefore, the conspiracy of the petitioner with the other accused-beneficiary of the two Wills is apparent on record.

In reply, counsel for the respondent has argued that revisional Court has recorded a categorical finding that no *prima facie* evidence has come against Hari Singh, Patwari, as he had to perform his duties and entered the mutation Nos.6294 and 6295 and when the two Wills were presented before him as he had no knowledge whether the Wills were fake or correct and it was the duty of the Kanungo and Tehsildar to verify the same before sanctioning the mutation and, therefore, the action of Hari Singh, Patwari was a part of his duties and, therefore, *prima facie* no offence is made out.

The revisional Court has also recorded the findings that there is no specific allegation against Hari Singh, Patwari, except that he was the part of the conspiracy and it is not the case of the prosecution that either the decree drawn by Hari Singh regarding the inheritance of the two persons Rupal Devi and Jagir Singh was drawn incorrectly by the petitioner.

After hearing counsel for the parties, I find no merit in the

present petition on the following grounds :-

- (i) The case of the petitioner is that the accused persons have fabricated two Wills pertaining to the share of Rimal Devi and Jagir Singh. However, this fact is to be ascertained by the trial Court at the time of final disposal of the case;
- (ii) There is nothing on the record to show that the petitioner-complainant has filed any civil suit where the aforesaid two Wills were either set aside or held to be forged documents as no copy of plaint or judgment of civil Court is on record;
- (iii) The allegation against the petitioner is that being Patwari he has entered the mutation on the basis of the two Wills and except that there is no other allegation;
- (iv) It is matter to practice that after a mutation based on sale, Will, mortgage or inheritance is entered by the Patwari, the same is verified by the Kanungo by calling the beneficiaries or the natural legal heirs for the deceased person and then same is attested/ sanctioned by the Tehsildar. Therefore, nothing has come on record that Hari Singh, Patwari was in conspiracy with the other accused persons;
- (v) The revisional Court has recorded correct finding that as per the parameters under Section 319 Cr.P.C., nothing has come on record to summon Hari Singh as additional accused; and

- (vi) It is also worth noticing here that this petition is pending since 2015 and the entire evidence is concluded and the case is at the stage of final arguments and Mohinder Singh, Kanungo and Rajiv Paul, Tehsildar have not assailed the impugned order summoning them as additional accused under Section 319 Cr.P.C. and they are facing the trial.

In view of the above, I find no ground to interfere in the impugned order.

The petition is, without any merit, and, therefore, dismissed.

March 26, 2019
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No