

**CRM-39649-2018 in/and  
CRM-M-26961-2015**

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

**CRM-39649-2018 in/and  
CRM-M-26961-2015 (O&M)**

**Date of decision-21.01.2019**

**Charan Dass**

**....Petitioner**

**Vs.**

**Rajinder Singh and others**

**...Respondents**

**CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ**

Present: Mr. Hari Om Sharma, Advocate for the applicant-petitioner.

Mr. V.B.Aggarwal, Advocate for respondent Nos.1 and 2.

Mr. Sukhdeep Parmar, DAG, Haryana.

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**MANOJ BAJAJ, J.**

**CRM-39649-2018**

Application under Section 482 of Cr.P.C. has been filed for  
impleading Narinder Singh and Gurdev Singh as respondent Nos.4 and 5.

Application is allowed as prayed for.

Registry is directed to amend the memo of parties accordingly.

**CRM-1781-2019**

Application is allowed as prayed for.

Annexures A and B are taken on record subject to all just  
exceptions.

**Main case**

Petitioner-Charan Dass is aggrieved against the order dated 21.05.2015 (Annexure P-7) passed by the revisional Court, whereby it has upheld the order passed by the trial Court refusing to summon additional accused, namely, Gurdev Singh and Narinder Singh upon an application filed by the complainant under Section 319 Cr.P.C.

Charan Dass lodged FIR with the allegations that the accused, namely, Gurdev Singh, Narinder Singh, Ajmer Singh and Rajender Singh induced him to pay money to them in order to procure job for his son. It is alleged that a sum of Rs.8,00,000/- was agreed between the complainant and the accused persons and a sum of Rs.5,00,000/- was paid to Gurdev Singh in the presence of Raj Kumar. Gurdev Singh paid the above said amount after taking it from the complainant to Ajmer Singh and Narinder Singh. According to the complainant, his son was not appointed, resultantly, he demanded his money back and the accused refused to return the amount. On these broad allegations, the FIR was registered and after investigation, final report was submitted against Rajender Singh and Ajmer Singh. Accused, Gurdev Singh and Narinder Singh were found innocent.

After commencement of trial, complainant testified as PW-1 wherein his testimony regarding payment to the accused was recorded and thereafter, an application under Section 319 Cr.P.C was moved for summoning Gurdev Singh and Narinder Singh as additional accused. The trial Court vide its order dated 25.08.2014 dismissed the application.

Dissatisfied with the order passed by the trial Court, a revision

was carried and the Additional Sessions Judge, Kurukshetra vide its order dated 21.05.2015 dismissed the revision petition.

Similarly, the revisional Court has also examined the material on record and the order passed by the trial Court was upheld. It is re-iterated by revisional Court that there is no fresh material before the trial Court warranting exercise of extra ordinary powers under Section 319 Cr.P.C. It is not in dispute that all the prosecution witnesses have been examined in the case.

Learned counsel for the parties have been heard and with their assistance, I have perused the case file.

Learned counsel for the petitioner contends that in view of the statement of PW-1, there is sufficient material to suggest the participation of Gurdev Singh and Narinder Singh and, therefore, they deserve to be summoned as an additional accused. According to him, the money was handed over to Gurdev Singh in the presence of Raj Kumar. However, to a query put up by Court, it is not disputed that there is no receipt issued against the payment which was given in cash.

At this stage, it is necessary to examine the statement of PW-1 made before the Court. In his evidence, the complainant has testified in respect of the payment of Rs.5,00,000/- made to the accused persons. The testimony of PW-1 -Charan Dass regarding payment to the accused reads as under:-

*“In May, 2007 at 11.00 AM Ajmer, Narender  
(wrongly written as Ravinder) and Rajender came to me.*

*I telephone to Ramesh who brought Rs.3 lacs and came with Raj Kumar who was his neighbor. He gave Rs.3 lacs to me and I paid Rs.5 lacs to Gurdev, Gurdev gave this amount to Ramesh, Ajmer and Narender (wrongly written as Ravinder) for counting. They count the money and put the same in their pocket and went away and promised that my son will be got appointed.”*

Statement of PW-2-Ramesh Chand, in respect of the payment reads as under:-

*“I took Rs.3 lacs from my shop and went to the house of Charan Dass alongwith /Raj Kumar son of Mohan Lal Mittal. Their Ajmer Singh, ASI Gurdev, Rajender and Narender were already sitting. I make the payment to Gurdev ASI. Gurdev paid Rs.3 lacs to his father and Rajender and Narender. They counted the amount. They said that now the son Charan Dass will be appointed.”*

There is lack of consistency in the statements of PW-1 and PW-2. It is settled law that even a *prima facie* evidence is not enough for exercise of power under Section 319 Cr.P.C. For attracting the provision of Section 319 Cr.P.C, the existence of stronger evidence is required to summon the additional accused. Even otherwise, this is only oral evidence and is not sufficient for summoning the additional accused.

Above all the contents of application under Section 319

Cr.P.C (Annexure P-3) reveal that complainant has relied upon the statement under Section 161 Cr.P.C for summoning additional accused. As per the contents of the application, it is pleaded that there is sufficient evidence on the file without making any reference to the evidence adduced during trial; much less the evidence of PW-2.

The judgment rendered by Hon'ble Supreme Court in “***Labhuji Amratji Thakor and others Vs. State of Gujarat and another***” is useful in the facts and circumstances of this case wherein in respect of power under Section 319 Cr.P.C following observations were made:-

*“The High Court does not even record any satisfaction that the evidence on record as revealed by the statement of victim and her mother even makes out a prima facie case of offence against the appellants. The mere fact that Court has power under Section 319 Cr.P.C to proceed against any person who is not named in the FIR or in the charge sheet does not mean that whenever in a statement recorded before the Court, name of any person is taken, the Court has to mechanically issue process under Section 319 Cr.P.C. The Court has to consider substance of the evidence, which has come before it and as laid down by the Constitution Bench in **Hardeep Singh (supra)** has to apply the test, i.e. ”more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction.”*

The version given before the Court is at variance with the version given in the FIR. There is no mention of person Ramesh Chand

(PW-2) in the FIR who is found mentioned in the statement before the Court. Considering the above, and the finding of the trial Court it is clear that there is no fresh material suggesting involvement of Gurdev Singh and Narinder Singh in the crime.

In the considered opinion of this Court, impugned judgments passed by the revisional Court as well as by the trial Court are based on the correct appreciation of the material on record and law on the subject. Resultantly, no ground for interference is made out.

Consequently, petition is dismissed.

**(MANOJ BAJAJ)  
JUDGE**

**21.01.2019**  
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|-----------------------------|-----|----|
| Whether speaking/reasoned : | Yes | No |
| Whether Reportable :        | Yes | No |