

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

CRM-M-5129-2017 (O&M)

Date of decision: 01.08.2019

Amit Sharma

....Petitioner

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Puneet Sharma-I, Advocate
for the petitioner.

Mr. Jagmohan Ghumman, DAG, Punjab.

Mr. Mohd. Yousaf, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting aside the order dated 18.04.2016 (Annexure P-10) passed by the trial Court, vide which, while allowing an application filed by the prosecution under Section 319 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), the petitioner had been summoned as additional accused as well as the order dated 11.11.2016 (Annexure P-12) passed by the revisional Court, vide which the revision petition filed by the petitioner was dismissed.

Brief facts of the case are that respondent No.2-complainant

Gopi Chand gave a complaint dated 03.01.2013 (Annexure P-1), only against Chander Mohan Sharma, brother of the petitioner, with the allegations that he had paid an amount of Rs.9.00 lacs for the purchase of a house, however, neither the amount was returned nor the sale deed was executed in his favour and even a cheque of Rs.2.00 lacs given by accused Chander Mohan Sharma was dishonoured. Thereafter, an inquiry was conducted by Additional Deputy Commissioner of Police, Crime, Jalandhar and as per the inquiry report dated 08.01.2013 (Annexure P-2), it was found that it is a dispute regarding landing of money between complainant Gopi Chand and accused Chander Mohan Sharma. Thereafter, the complainant gave another application dated 22.07.2013 (Annexure P-3) to the Commissioner of Police, Jalandhar against Chander Mohan Sharma alone and the petitioner was not named. An inquiry was conducted by ADCP, Jalandhar, in which statement of the complainant was recorded on 14.09.2013 (Annexure P-4) and in this statement also, respondent No.2-complainant has named Chander Mohan Sharma as the sole person, who had allegedly cheated him. One more representation was given by the complainant on 14.10.2013 (Annexure P-5) levelling allegations against Chander Mohan Sharma alone and FIR No.223 dated 25.10.2013 (Annexure P-6) under Sections 406, 420 of the Indian Penal Code (for short 'IPC') was registered at Police Station Division No.5, Jalandhar.

After conducting the inquiry, the police submitted the report under Section 173 Cr.P.C. on 23.12.2013 (Annexure P-7) against Chander Mohan Sharma alone and the petitioner namely Amit Sharma was neither

kept in column No.4 nor in column No.2 of this report, as at no stage, the complainant has levelled any allegations against the petitioner.

The trial Court, thereafter, framed the charges against Chander Mohan Sharma under Sections 406 and 420 IPC and complainant Gopi Chand appeared as PW2 and for the first time, he named the petitioner as a person, to whom he met along with Chander Mohan Sharma at Jalandhar Cantt. Railway Station, in which the petitioner allegedly told him that he is working as property dealer and would arrange a plot for him and both were paid Rs.1.50 lacs.

Thereafter, the prosecution moved an application under Section 319 Cr.P.C. for summoning the petitioner as additional accused with the allegations that even the petitioner has cheated and defrauded the complainant. The trial Court, vide impugned order dated 18.04.2016 (Annexure P-10), summoned the petitioner on the basis of statement of the complainant, who appeared as PW2. The petitioner preferred a revision petition before the Court of Sessions and the same was dismissed, vide impugned order dated 11.11.2016 (Annexure P-12). The operative part of the order dated 11.11.2016 reads as under: -

“I have considered the respective contentions and gone through the file carefully.

Although, name of accused Amit has not been mentioned by the complainant in the FIR nor he deposed against him during enquiry conducted by the police, however, while appearing as PW2 in the Court, he categorically stated

that he paid Rs.1½ lacs to Chander Mohan Sharma and his brother Amit at Railway Station, Jalandhar Cantt, for the purchase of house. Amit also told the complainant that he is doing the business of sale and purchase of property alongwith his brother and they assured the complainant that both the brothers shall get purchase a good house for him at Jalandhar. As such, Chander Mohan Sharma and Amit induced the complainant to deliver a sum of Rs.9 lacs dishonestly and fraudulently. Moreover, revisionist/accused is brother of accused Chander Mohan Sharma already facing trial before the Court. Therefore, there is possibility that both the accused in connivance with each other defrauded the complainant. The authorities relied upon by learned counsel for the complainant with regard to power of the Court to summon the accused, are fully applicable to the facts of this case. As such, there is no illegality in the impugned order dated 18.4.2016 and the same does not call for any interference by this Court.

Consequently, the present revision is liable to be and is hereby dismissed.”

Learned counsel for the petitioner has argued that a perusal of the documents i.e. original complaint given to the police (Annexure P-1), report (Annexure P-2) and (Annexure P-5) shows that the complainant has not named the petitioner as an accused in any manner. Even in the FIR, which was registered on the statement of complainant, there is no reference

of the petitioner that he, in conspiracy with his brother-accused Chander Mohan Sharma, has cheated the complainant. A perusal of the report submitted under Section 173 Cr.P.C. also shows that during the investigation of this FIR, the complainant never recorded any supplementary statement levelling any allegation against the petitioner. It is further submitted that the challan was presented only against Chander Mohan Sharma and the petitioner was not even kept in column No.4 or column No.2 of the report under Section 173 Cr.P.C.

Learned counsel has referred to statement of the complainant, who appeared as PW2 on 15.07.2014, wherein, for the first time, the complainant made some improvements and stated that when he met Chander Mohan Sharma at Jalandhar Cantt. Railway Station, the petitioner was there along with him and petitioner Amit Sharma informed him that he is working as property dealer and assured him that both of them can arrange a good plot for him and he paid some amount to them. Except this, the complainant has nowhere stated about role of the petitioner in the entire sequence of events, in which he has stated that he had given the amount to accused Chander Mohan Sharma on different dates, for the purpose of purchasing a house.

Learned counsel has further submitted that in view of the above, both the Courts have wrongly summoned the petitioner by relying upon the statement of complainant-PW2, who, for the first time, after a period of about one and half year of filing of the complaint and the inquiries conducted by the police authorities, has named the petitioner.

Learned counsel for the petitioner has relied upon a judgment

of the Hon'ble Supreme passed in **Criminal Appeal No.395 of 2019** (arising out of SLP (Crl.) No.4626 of 2017) titled as **Sunil Kumar Gupta and others Vs. State of Uttar Pradesh and others**, decided on **27.02.2019**, wherein it is held that a person should not be summoned as additional accused on the mere statement of the complainant and while summoning a person as additional accused, the Court should satisfy itself that more than prima facie case is made out against such person, which is more than mere probability of his complicity, to face the trial. The operative part of this judgment reads as under: -

*“Section 319(1) Cr.P.C. empowers the Court to proceed against any person not shown as an accused if it appears from the evidence that such person has committed any offence for which such person could be tried together along with the accused. It is fairly well settled that before the court exercises its jurisdiction in terms of Section 319 Cr.P.C., it must arrive at satisfaction that the evidence adduced by the prosecution, if unrebutted, would lead to conviction of the persons sought to be added as the accused in the case. In **Hardeep Singh**, the Constitution Bench held as under:-*

“105. Power under Section 319 Cr.P.C is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge

is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is 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. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if “it appears from the evidence that any person not being the accused has committed any offence” is clear from the words “for which such person could be tried together with the accused”. The words used are not “for which such person could be convicted”. There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused.” [underlining

added]

*Observing that for exercising jurisdiction and its discretion in terms of Section 319 Cr.P.C., the courts are required to apply stringent tests, in **Sarabjit Singh and Another vs. State of Punjab and Another (2009) 16 SCC 46**, it was held as under:-*

“21. An order under Section 319 of the Code, therefore, should not be passed only because the first informant or one of the witnesses seeks to implicate other persons(s). Sufficient and cogent reasons are required to be assigned by the court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. Such an evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction. For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

22. Whereas the test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, the court must be satisfied that there exists a strong suspicion. While framing charge in terms of Section 227 of the Code, the court

must consider the entire materials on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction.

23. Whether a higher standard be set up for the purpose of invoking the jurisdiction under Section 319 of the Code is the question. The answer to these questions should be rendered in the affirmative. Unless a higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down, the ingredients thereof viz. (i) an extraordinary case, and (ii) a case for sparingly (sic sparing) exercise of jurisdiction, would not be satisfied.” [underlining added]

Applying the above principles to the case in hand, in our considered view, no prima facie case is made out for summoning the appellants and to proceed against the appellants for the offence punishable under Section 302 IPC. As pointed out earlier, in the dying declaration, deceased Shilpa has only mentioned the name of Chanchal @ Babita; but she has not mentioned the names of others. In his complaint lodged before the police on the next day i.e. 20.08.2012, Sudhir Kumar Gupta-PW-1 has stated that his daughter Shilpa told him that Chanchal @ Babita and all other people set her on fire after pouring kerosene. PW-1 has

neither stated the names of the appellants nor attributed any overt act. Likewise, in their evidence before the court, PWs 1 and 3 have only stated that Shilpa told them that Chanchal @ Babita and all others have set fire on deceased Shilpa. Neither the complaint nor the evidence of witnesses indicates as to the role played by the appellants in the commission of the offence and which accused has committed what offence. Under such circumstances, it cannot be said that the prosecution has shown prima facie material for summoning the accused for the offence punishable under Section 302 IPC.

Under Section 319 Cr.P.C., a person can be added as an accused invoking the provisions not only for the same offence for which the accused is tried but for “any offence”; but that offence shall be such that in respect of which all the accused could be tried together. It is to be seen whether the appellants could be summoned for the offence under Section 498A IPC and under Sections 3 and 4 of Dowry Prohibition Act. The statement of PW1 both in the complaint and in his evidence before the court is very general stating that he had given sufficient dowry to Shilpa according to his status and that the groom side were not satisfied with the dowry and that they used to demand dowry each and every time. Insofar as the demand of dowry and the dowry harassment, there are no particulars given as to the time of demand and what was the

*nature of demand. The averments in the complaint and the evidence is vague and no specific demand is attributed to any of the appellants. In such circumstances, there is no justification for summoning the appellants even under Section 498A IPC and under Sections 3 and 4 of Dowry Prohibition Act. It is also pertinent to point out that upon completion of investigation, the Investigating Officer felt that no offence under Sections 498A, 304-B IPC and under Sections 3 and 4 of the Dowry Prohibition Act is made out. Charge sheet was filed for the offence punishable only under Section 302 IPC against Chanchal @ Babita. As held in the Constitution Bench judgment in **Hardeep Singh**, for summoning an accused under Section 319 Cr.P.C. it requires much stronger evidence than mere probability of his complicity which is lacking in the present case. The trial court and the High Court, in our considered view, has not examined the matter in the light of the well-settled principles and the impugned order is liable to be set aside.”*

In reply, learned counsel for respondent No.2-complainant could not dispute that from the initial complaint dated 03.01.2013 till submission of report under Section 173 Cr.P.C. on 23.12.2013, in the intervening period of about one and half year, the complainant has not made any complaint or made any statement during the inquiry nor has recorded any supplementary statement under Section 161 Cr.P.C. in present FIR,

naming the petitioner as one of the accused.

After hearing learned counsel for the parties, I find merit in the present petition, for the following reasons: -

- (a) As noticed above, the complainant, in the first complaint given on 03.01.2013 and during inquiry of the said complaint and even in the FIR, has not pointed a finger towards the petitioner as one of the accused. It is also not disputed that even during the investigation, the complainant has not recorded any statement under Section 161 Cr.P.C. naming the petitioner as an accused along with his brother-accused Chander Mohan Sharma.
- (b) It is a matter of fact that in the FIR, the petitioner is not named and even in the report under Section 173 Cr.P.C., he was neither kept in column No.4 nor in Column No.2 and the complainant has not raised any suspicion till submission of report under Section 173 (2) Cr.P.C.
- (c) The complainant, after a period of about one and half year, for the first time, while appearing as PW2 on 14.07.2014, named the petitioner as a person, who was found standing at the Jalandhar Cantt. Railway Station along with his brother-accused Chander Mohan Sharma and introduced himself as property dealer and assured the complainant that he can arrange a good plot for him and that he gave Rs.1.50 lacs to both of them. Except for this, in the subsequent part of the statement as

PW2, the complainant stated that he has allegedly given Rs.9.00 lacs to brother of the petitioner namely Chander Mohan Sharma.

- (d) In view of judgment of the Hon'ble Supreme Court in **Sunil Kumar Gupta's** case (supra), I find that both the Courts have not applied its judicial mind and totally ignored the original complaint given to the police, FIR and report under Section 173 Cr.P.C. and have not recorded a satisfaction that much stronger evidence than mere probability of his complicity, has come against the petitioner in the statement of complainant, while appearing as PW2, which itself show improvements after one and half year.

For the reasons recorded above, present petition is allowed and the impugned order dated 18.04.2016 (Annexure P-10) as well as the impugned order dated 11.11.2016 (Annexure P-12) passed by the Courts below are set aside.

[ARVIND SINGH SANGWAN]
JUDGE

01.08.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No