

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

**CRR No.3035 of 2017 (O&M)
Decided on: 30.05.2019**

Rajinder Kumar Sharma

....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. G.S. Bedi, Advocate
for the petitioner.

Mr. Sidakmeet S. Sandhu, AAG, Punjab.

Mr. Kapil Sharma, Advocate
for respondents No.2 and 3.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petition is for setting-aside the order dated 02.03.2017 vide which the trial Court allowed the application filed by the complainant/respondent No.2 – Navjit Kumar under Section 319 of the Criminal Procedure Code (in short ‘Cr.P.C.’) and summoned the petitioner as an additional accused – Pawan Kanwal in FIR No.76 dated 21.05.2014 registered under Sections 406, 420 and 120-B of the Indian Penal Code, 1860 (in short ‘IPC’) at Police Station Navi Baradari, Jalandhar.

Brief facts of the case are that the complainant registered the FIR against one Pawan Kanwal with the allegations that the complainant and his friend Vipin Kumar came in contact with one Pawan Kanwal and Dr. Anil Kumar Sharma, R.K. Sharma Clinic Jalandhar, who offered them to sent to Singapore and called them to his

clinic in the month of August, 2013. The complainant paid Rs.2.25 lacs to accused Anil Kumar Sharma at his clinic and the same was given to one Pawan Kanwal, in the presence of Vipin Kumar and Mohan Lal and he executed a written declaration that he shall be liable to return the money if he fails to send them abroad.

The police thereafter, on completion of investigation, submitted the report under Section 173 Cr.P.C. against Dr. Anil Kumar Sharma, R.K. Sharma Clinic Jalandhar and Pawan Kanwal and thereafter, charges were framed and the statement of the complainant Navjit Kumar was recorded as PW1, in which he has stated that Dr. Anil Kumar Sharma @ Rajinder Kumar Sharma are the same persons and thereafter, he moved an application under Section 319 Cr.P.C. for summoning the petitioner as an additional accused, which was allowed vide impugned order dated 02.03.2017. The operative part of the impugned order reads as under:-

“...I have heard the learned APP and have gone through file carefully. In the present case, the complainant Navjit Kumar moved an application to Commissioner of Police against Dr. Anil Kumar Sharma @ Dr. Rajinder Kumar Sharma @ Dr. Anil Kumar Sharma and accused Pawan Kanwal averring that said Dr. Rajinder Kumar Sharma @ Dr. Anil Kumar Sharma introduce him to accused Pawan Kanwal and a sum of Rs.2,25,000/- was paid to said Dr. Anil Kumar Sharma @ Dr. Rajinder Kumar Sharma by complainant at his clinic and he did not return the said amount, when the accused No.2 Pawan Kanwal expressed his ability to do anything on the matter. In this case FIR has lodged against accused Pawan Kanwal only. The complainant at the time of recording in

*his evidence in Court stated same facts against accused Dr. Anil Kumar Sharma @ Dr. Rajinder Kumar Sharma. He has also been cross-examined by the counsel of accused Pawan Kanwal. I have further gone through the file and found that in the statement of complainant recorded by police he has reiterated the same allegations as levelled against Dr. R.K. Sharma in his earlier application moved to Commissioner of Police. The material on record and statement of complainant recorded by police and recorded in Court are reflecting that Dr. Rakesh Kumar Sharma @ Dr. Anil Kumar Sharma was involved in the matter in issue. The police has given no cogent ground in their inquiry and investigation to absolve said Dr. Rajinder Kumar Sharma @ Dr. Anil Kumar Sharma in the present case. I am inclined here to mention the pronouncement of Hon'ble Supreme Court in a case titled as **Hardip Singh vs State of Punjab 2014(1) RCR (Criminal) 623** wherein the Hon'ble Supreme Court has held that*

“the degree of satisfaction that will be required for summoning the person under Section 319 Cr.P.C. would be same as required for framing charge and where the investigating agency for any reason does not array one of the culprits as an accused, the Court is not powerless in calling said accused to face trial.”

Since, the complainant has specifically deposed in Court pertaining to the involvement of Dr. Anil Kumar Sharma @ Dr. Rajinder Kumar Sharma in the offence committed against him and his statement is corroborating the version of his complaint move to Commissioner of Police and statement recorded by police. Therefore, a prima facie case is made out to summon the person to face trial alongwith other co-accused in the present case.

Hence the accused namely Dr. Rajinder Kumar Sharma @ Dr. Anil Kumar Sharma is ordered to be summoned for 01.04.2017 to face trial for committing an offence punishable under Sections 406 & 420 of IPC.”

Counsel for the petitioner has submitted that in the FIR, it is nowhere mentioned that Dr. Anil Kumar Sharma's name is alias Dr. Rajinder Kumar Sharma. Counsel for the petitioner has referred to the report under Section 173 Cr.P.C. wherein no such fact has come during the investigation.

Counsel for the petitioner has relied upon an enquiry conducted by the SI/Incharge, Economic Offences Wing, Commissionerate Jalandhar, wherein it is mentioned as under:-

“...In the application, there is also allegation against Doctor Anil Kumar Sharma, who is in Gaziabad U.P. from the period of about 28-30, years and now his younger brother Dr. Rajinder Kumar Sharma, Sharma Clinic Medical is doing the practice in this premises. Even the applicant party does not know the correct name of the Doctor. Actually, it has been stated applicant Navjit Kumar and Vipin Kumar have close relations with the shop owner Sanjiv Kumar Chhabra son of Om Parkash. Sanjiv Kumar Chhabra wants to vacate his shop from them due to which the name of Dr. Anil Kumar Sharma, Sharma Clinic Bhargo Camp, Jalandhar has got written in the applications. That the allegations levelled against are not proved during the enquiry and nor any of his fault has came to light....”

Counsel for the petitioner has also argued that during the enquiry, it is found that Dr. Anil Kumar Sharma is residing in Ghaziabad and his younger brother Dr. Rajinder Kumar Sharma is

doing the practice in the premises of R.K. Sharma Clinic, Jalandhar.

Counsel for the petitioner has, thus, argued that the trial Court before allowing the application under Section 319 Cr.P.C. has not recorded a categorical finding that Dr. Anil Kumar Sharma and Dr. Rajinder Kumar Sharma are one and the same persons. It is also submitted that for the first time while appearing as PW1, the complainant has stated this fact by referring the petitioner as Anil Kumar Sharma @ Rajinder Kumar Sharma and therefore, the trial Court has allowed the application in a casual manner without recording a specific finding in this regard.

Counsel for the petitioner has relied upon the judgment ***“Brijendra and others vs State of Rajasthan”*, 2017(3) RCR (Criminal) 374**, to submit that where the evidence recorded during the trial is nothing more than the statement, which is already there under Section 161 Cr.P.C., such evidence cannot be termed as “much stronger” than mere possibility of (petitioners’) complicity, which has come on record.

In reply, counsel for the State assisted by counsel for the complainant has stated that there are direct allegations of cheating against the petitioner as in the complaint given to the Commissioner of Police, Jalandhar, it is stated that Dr. Anil Kumar Sharma, R.K. Sharma Clinic, Jalandhar is the accused person.

After hearing the counsel for the parties, I find merit in the present petition. A perusal of the complaint forming basis of the registration of the FIR as well as the report under Section 173 Cr.P.C., show that at no point of time, the complainant has referred Dr. Anil

The trial Court will pass afresh order after affording an opportunity of hearing to the parties.

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Yes/No