

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

201

**CRR-2135-2018(O&M)
Date of Decision : 06.11.2019**

Rajinder Parshad

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Ms. Amandeep Singh, Advocate for the petitioner.

Mr. Sandeep Singh Deol, D.A.G. Punjab.

ARUN KUMAR TYAGI, J.

CRM-22107-2018

Prayer in the application is for placing on record
Annexures P-1 to P-4.

For the reasons mentioned in the application, the same is
allowed and Annexures P-1 to P-4 are taken on record.

CRR-2135-2018(O&M)

The petitioner has filed the present revision petition under
Section 401 of the Code of Criminal Procedure, 1973 (for short 'the
Cr.P.C.') for setting aside impugned order dated 17.05.2018 passed by
learned Judge, Special Court, Fazilka in NDPS Act Case No.587 of
24.12.2014, CNR No.PBFZCO-0057032014, CIS No.NDPS 587/2014
titled State Vs. Balkaran Singh arising out of FIR No.78 dated
25.05.2014 registered under Section 22 of the Narcotic Drugs and
Psychotropic Substances Act, 1985 (for short 'the NDPS Act) at Police
Station Bahavwala, District Fazilka.

Briefly stated the facts relevant for disposal of the present revision petition are that on 25.05.2014 when police party headed by Jaswant Singh, Inspector SHO travelling in Government vehicle-Bolero Camper bearing registration No.PB-05R-9847 reached in the course of patrolling duty about ½ km. ahead of Village Rajpura towards Village Dodewala on a link road, the police party spotted accused-Balkaran Singh carrying rexin bag in his right hand who on seeing the police party tried to turn towards left side in the fields. He was apprehended on suspicion and on search conducted in the presence of Sh. Veer Chand, Deputy Superintendent of Police, Sub Division, Balluana, as per the prescribed procedure, 100 strips containing 10 ALFORD 0.5 tablets each totalling 1000 tablets, one steel spoon, one plastic envelope containing intoxicant powder weighing 1 kg., 20 empty polythene envelopes and currency notes valuing Rs.8,500/- were recovered from the bag.

FIR was accordingly registered. During investigation accused-Balkaran Singh made disclosure statement and got one bag containing intoxicant power weighting 18 kgs and currency notes valuing Rs.8,00,000/- recovered from his house and implicated the petitioner-Rajinder Parshad as supplier of the same. On application submitted by one Kapur Chand s/o Parkash Chand r/o Sangrur, S.P. Abohar made inquiry and found the petitioner-Rajinder Parshad to be innocent. Accordingly, on completion of investigation accused-Balkarn Singh was charge-sheeted to face trial under Section 22 of the NDPS Act and name of Rajinder Parshad was kept in column No.2 of the challan.

The trial commenced with framing of charge against accused-Balkaran Singh and during trial in view of examination of Jaswant Singh, Inspector SHO as PW-3, the prosecution filed an application under Section 319 of the Cr.P.C. for summoning of the petitioner as an additional accused. Learned Judge, Special Court, Fazilka vide impugned order dated 17.05.2018 allowed the application and summoned the petitioner to face trial with co-accused Balkaran Singh.

Feeling aggrieved, the petitioner has filed the present revision petition for setting aside order dated 17.05.2018.

Vide order dated 03.07.2018 of the Coordinate Bench of this Court notice of motion was issued pursuant to which learned State Counsel has appeared and opposed the prayer of the petitioner for setting aside the impugned order.

I have heard learned Counsel for the petitioner as well as learned State Counsel and gone through the record.

Learned Counsel for the petitioner has argued that the petitioner was not named in the FIR. He was named in disclosure statement of the co-accused but was found to be innocent during investigation. The impugned order has been passed by learned Judge, Special Court, Fazilka without going thorough the facts and analysing the legal position only on the basis of testimony of PW-3 Jaswant Singh, SHO Inspector regarding making of disclosure statement by co-accused Balkaran Singh implicating the petitioner. During investigation, the disclosure statement of accused-Balkaran Singh was

found to be not true. The same does not constitute substantive evidence. There is no other material against the petitioner. There was no sufficient ground to summon the petitioner under Section 319 of the Cr.P.C. Therefore, the impugned order may be set aside. In support of his arguments learned Counsel for the petitioner has placed reliance on the observations made in *Hardeep Singh and others Vs. State of Punjab and others : 2014 (1) RCR (Criminal) 623* and *Sushil Soni Vs. State of Haryana and others : 2016 (3) RCR (Criminal) 793*.

On the other hand, learned State Counsel has argued that the petitioner had supplied the contraband to co-accused Balkaran Singh and had thereby committed offences punishable under Sections 22 and 29 along with co-accused Balkaran Singh for which the petitioner can be tried with him. There is sufficient material justifying summoning of the petitioner as an additional accused and the impugned order does not suffer from any material illegality or irregularity. Therefore, the revision petition may be dismissed.

On perusal of the material on record and consideration of the submissions made by learned Counsel for the petitioner and learned State Counsel, I am of the considered view that the impugned order suffers from material illegality and is liable to be set aside.

Section 319 of the Cr.P.C., which empowers the Court to proceed against other persons appearing to be guilty of offence, reads as under:-

319. Power to proceed against other persons appearing to be guilty of offence.—

- (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for

which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

- (2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.
- (3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.
- (4) Where the Court proceeds against any person under sub-section (1), then—
 - (a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;
 - (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

It is now well settled that power under Section 319 of the Cr.P.C. is discretionary and an extra-ordinary power which 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. 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, 1973. (See *Hardeep Singh and others Vs. State of Punjab and others : 2014 (1) RCR (Criminal) 623; Dev Wati and others Vs. State of Haryana and another : 2019 AIR (SC) 641 and Periyasami and others Vs. S. Nallasamy : 2019(2) RCR (Criminal) 556*).

In the present case, the petitioner has been summoned as an additional accused on the basis of statement of PW-3 Jaswant Singh, Inspector SHO regarding making of disclosure statement Ex.PE by accused-Balkaran Singh naming the petitioner as the person from whom he had brought the recovered intoxicant material. It may be noticed here that on inquiry made on the application of Kapur Chand s/o Parkash Chand r/o Sangrur, S.P. Abohar found the disclosure statement to be false and the petitioner to be innocent. There is no material other than the disclosure statement of accused-Balkaran Singh to implicate the petitioner for commission of offences punishable under Sections 22 and 29 of the NDPS Act. Disclosure statement of the co-accused does not constitute substantive evidence against the petitioner. Reference in this regard may be made to the observations made by Hon'ble Supreme Court in *Surinder Kumar Khanna Vs. Intelligence officer Directorate of Revenue Intelligence : 2018(3) RCR (Criminal) 954*. Mere disclosure of the name of the petitioner cannot be said to be strong and cogent evidence sufficient to summon him under Section 319 of the Cr.P.C. This view finds support from judgment of Hon'ble Supreme court in *Periyasami and others Vs. S. Nallasamy : 2019(2) RCR (Criminal) 556*.

In these facts and circumstances of the case, there is no strong and cogent evidence to make out more than prima facie case required for framing of charge but short of satisfaction to the extent that, if it goes unrebutted, would lead to conviction. Therefore, the petitioner could not be summoned under Section 319 of the Cr.P.C. to face trial as an additional accused with co-accused Balkaran Singh for commission of offences punishable under Sections 22 and 29 of the NDPS Act and the impugned order suffers from material illegality and is liable to be set aside.

In view of the above discussion, the revision petition is allowed and the impugned order dated 17.05.2018 is set aside.

06.11.2019
Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

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