

In the High Court of Punjab and Haryana at Chandigarh

**CRM-M No. 49836 of 2017
Date of Decision: 06.03.2020**

Gurmukh Singh and another

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. B.S.Jaswal, Advocate
for the petitioners.

Mr. Kirat Singh Sidhu DAG, Punjab.

Mr. Sarabjit Singh, Advocate
for respondent No. 2.

HARNARESH SINGH GILL, J.

Through the instant petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for brevity, 'Cr.P.C.'), the petitioners, namely, Gurmukh Singh and Rajminder Singh Chahal, have impugned the order dated 06.06.2017 (Annexure P-19) passed by the learned Sub Divisional Judicial Magistrate, Baba Bakala Sahib, Amritsar, whereby application under Section 319 Cr.P.C. moved by respondent No.2-complainant, was allowed and the petitioners were summoned as additional accused to face the trial.

Prosecution story, in brief, is that complainant-Hardeep Singh made a complaint to I.G.Border Range, Amritsar alleging that Baljinder Singh, Halqa Patwari had wrongly entered the inheritance in the name of

accused Saudagar Singh. Saudagar Singh had sold the ancestral land of the complainant to Daljit Singh, who further sold it to Gurmukh Singh as well as Rajmandir Singh (petitioners) and Jaswant Singh. The accused persons in connivance with each other had tried to misappropriate his land by playing fraud upon him. On the basis of the said complaint, FIR No. 53 dated 18.4.2012, under Sections 420, 419, 467, 468, 471, 120-B IPC had been registered at Police Station Beas, District Amritsar (Rural) against Daljit Singh and his accomplices.

During the enquiry of the FIR in question, Daljit Singh submitted a representation to the Senior Superintendent of Police, Amritsar (Rural), which was enquired into by the Superintendent of Police (HQ), Amritsar (Rural). Vide report dated 25.7.2012, Daljit Singh was found innocent and recommendation was made to delete his name from the FIR and to arrest Satnam Singh, Faquir Singh and Saudagar Singh. On the basis of said inquiry report, challan was presented only against accused Faquir Singh.

When the case was at the stage of prosecution evidence, the complainant-respondent No. 2 moved an application under Section 319 Cr.P.C. for summoning the petitioners as well as Daljit Singh and Patwari Baljinder Singh as additional accused.

In the application, it was averred that Boor Singh, father of complainant-Hardeep Singh was the owner in possession of land measuring 08 kanals 16 marlas bearing khasra No. 102/4/2 (6-8), 7/2 (0-8), 8/1 (2-0) along with other land; that Boor Singh had died on 25.7.1997 and after his death, complainant-Hardeep Singh and his brother Paramjit Singh had inherited the estate of Boor Singh, including the land in question in equal

share, on the basis of Will dated 16.5.1996. It was also averred that accused-Daljit Singh, Gurmukh Singh (petitioner No.1) and Rajminder Singh (petitioner No.2) in connivance with Halqa Patwari Baljinder Singh and Faquir Singh had got sanctioned ante-dated bogus mutation No.970 dated 29.5.1974 with regard to the inheritance of one fictitious person, namely, Boor Singh in favour of his two fictitious sons namely Saudagar Singh and Teja Singh. It was further averred that accused, namely, Daljit Singh, Gurmukh Singh and Rajminder Singh, in connivance with Halqa Patwari and Faquir Singh had made a false entry in the *jamabandi* for the year 1968-69 transferring the land in the names of two fictitious persons, Saudagar Singh and Teja Singh sons of Boor Singh, on the basis of mutation No.970. The accused, Daljit Singh, Gurmukh Singh and Rajminder Singh, Lambardar Chanan Singh and Satnam Singh had forged and fabricated the sale deed dated 14.8.2008 in favour of accused-Daljit Singh by impersonating some person as Saudagar Singh son of Teja Singh. The petitioners in order to usurp the land in question, in connivance with accused Daljit Singh and others got executed false sale deeds dated 14.8.2008 and 30.4.2009 and got sanctioned the mutations No. 2035 and 2063.

Vide order dated 06.6.2017, the application moved by the complainant under Section 319 Cr.P.C., was allowed by the trial Court and the petitioners along with Daljit Singh and Patwari Baljinder Singh were summoned to face the trial as additional accused.

Learned counsel for the petitioners has argued that as per Section 319 Cr.P.C., in order to summon an accused as an additional accused, there must be some material before the trial Court that the accused

has committed an offence which should be sufficient to convict him, but in the case in hand, the petitioners had been found innocent during the investigation. The impugned order summoning the petitioners is contrary to law. He further contended that the order under Section 319 Cr.P.C., should not be passed in a mechanical manner and while summoning an accused as additional accused, the court is required to probe into the matter deeply, so that no innocent person may suffer and be made to face the trial.

The learned counsel for the petitioners further argued that the petitioners had purchased the property from Daljit Singh to whom Saudagar Singh had sold his ownership rights in the year 2008. Prior to purchase of property by the petitioners, they verified the revenue records and as per the same, Saudagar Singh was shown as owner of the property in question. Since the sale deed made by Saudagar Singh was declared as null and void by the civil court, the petitioners filed a suit for recovery against Daljit Singh, which is still pending. The petitioners themselves were defrauded of an amount of Rs.12,90 lakh. The trial Court has wrongly summoned the petitioners without taking into consideration the facts and evidence available on record.

Per contra, the learned State counsel and learned counsel for respondent No.2 submitted that the trial Court had rightly summoned the petitioners as additional accused and had not committed any illegality.

I have heard the learned counsel for the parties and with their able assistance, have gone through the record.

Before proceeding further, it would be apposite to reproduce Section 319 Cr.P.C. which 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 subsection (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.”

A bare perusal of Section 319 Cr.P.C. shows that it allows the Court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, is necessarily not to be an accused already facing trial. He can either be a person named in Column No.2 of the charge-sheet filed under Section 173 Cr.P.C. or a person whose name has been disclosed before the

Court trying the offence. He has to be a person whose complicity may be

indicated and connected with the commission of the offence.

In *Hardeep Singh vs. State of Punjab and others* 2014 (1)

RCR (Criminal) 623 while dealing with power of Court to summon a person as additional accused, a five-Judge Bench of the Hon'ble Apex Court has held as under:

"110. We accordingly sum up our conclusions as follows:

Question Nos. I & III

Q.I What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND

Q.III Whether the word "evidence" used in Section 319 (1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

*A. In **Dharam Pal's** case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused. Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the charge-sheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. As evidence brought during a trial.*

Question No. II

Q.II Whether the word "evidence" used in Section 319 (1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. A person against whom material is disclosed is only summoned

to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. IV

Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused?

Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No. V

Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh. The matters be placed before the appropriate Bench for final disposal in accordance with law explained hereinabove."

In the present case, accused, namely, Daljit Singh, Gurmukh Singh and Rajminder Singh in connivance with the then Halqa Patwari and Faquir Singh got made a false entry in *jamabandi* for the year 1968-69 transferring the suit land in the names of two fictitious persons Saudagar

Singh and Teja Singh, on the basis of mutation No.970, in respect of

inheritance of one Boor Singh, who died in the year 1997. In fact, the property of Boor Singh could never be legally transferred vide mutation No.970. Thereafter, vide *jamabandi* for the year 2003-04, ownership of the land in question was again changed by Halqa Patwari and Saudagar Singh was only shown to be owner of the same. In mutation No.970 of 1974 and *jamabandis* for the years 1973-74 to 1998-99, Saudagar Singh had been falsely and illegally shown as brother of Teja Singh son of Boor Singh, whereas in the *jamabandi* for the year 2003-04, he had been shown to be the son of Teja Singh and grand-son of Boor Singh. Thus, the allegations against accused, Daljeet, Gurmukh Singh and Rajminder Singh, Lumberdar Chanan Singh and Satnam Singh, are that they had forged and fabricated the sale deed dated 14.08.2008 in favour of accused Daljeet Singh by impersonating some person as Saudagar Singh.

Hardeep Singh (complainant) has specifically named the petitioners in the application/complaint on the basis of which the aforesaid FIR had been registered. They were also named in the statements of other witnesses. Moreover, the complainant while appearing as PW 3 has specifically stated that the accused persons, including the present petitioners, had connived with each other and got mutated the land in the name of Saudagar Singh and further sold the same.

To my mind, the application filed under Section 319 Cr.P.C. has been rightly allowed by the Sub Divisional Judicial Magistrate as it is evident that the petitioners have committed an offence for which they could be tried with the accused already facing the trial. Learned counsel for the petitioners has failed to point out any illegality or perversity in the impugned order.

Accordingly, the impugned order dated 06.06.2017 passed by the learned Sub Divisional Judicial Magistrate, Baba Bakala Sahib, Amritsar, is upheld and the present petition, being devoid of any merit, is dismissed.

It is made clear that observations made hereinabove shall not be construed as an expression on the merits of the case and lis in the present case is limited to the extent of decision on the application under Section 319 CrPC. The trial Court shall not be influenced with any observation made above.

06.03.2020

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Note:	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No