

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

**CRM-M No.996 of 2016 (O&M)  
Decided on: 20.02.2020**

Amar Singh and another

....Petitioners

Versus

State of Punjab and another

....Respondents

**CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN**

**Present :** Mr. Veneet Sharma, Advocate  
for the petitioners.

Mr. Joginder Pal Ratra, DAG, Punjab.

Mr. M.K. Bhatnagar, Advocate  
for respondent No.2.

**ARVIND SINGH SANGWAN, J. (Oral)**

Prayer in this petition is for quashing of complaint bearing No.29 dated 06.12.2011 (Annexure P3) titled as 'Amrik Singh vs Amar Singh and another' and for setting-aside the orders dated 28.09.2015 (Annexure P-4) passed by the trial Court vide which the petitioners were summoned to face the trial and dated 03.12.2015 (Annexure P5) vide which the revision filed against the order dated 28.09.2015 has been dismissed by the Revisional Court.

Brief facts of the case are that at the instance of respondent No.2 – Amrik Singh FIR No.167 dated 18.05.2011 under Section 420 IPC at Police Station Civil Lines, Amritsar was registered with the

allegation that the petitioners along with one another accused namely Amarjit Kaur in conspiracy with each other on the pretext of sending the son of the complainant abroad have taken an amount of Rs.7.10 lacs. Neither the son of the complainant was sent abroad nor the amount was given and thereafter, the police conducted the investigation and submitted the challan only qua the accused – Amarjit Kaur in her absence as she was declared a proclaimed offender vide order dated 30.05.2015 whereas the petitioners were found innocent and no challan was presented against them.

Counsel for the petitioners has argued that thereafter the respondent/complainant – Amrik Singh appeared as a witness and thereafter, the application was moved by the prosecution under Section 319 Cr.P.C. for summoning the petitioner as an additional accused.

The said application was dismissed by the Court of Judicial Magistrate Ist Class vide order dated 07.03.2015 by passing the following order:-

*“3. I have gone through the case file. In case u/s 319 Cr.P.C., the powers vested with the court are required to be used sparingly and primarily to advance the cause of criminal justice and if compelling reasons exists, for taking cognizance against any persons against whom action had not been taken earlier. I have perused the enquiry report under Section 173 of Cr.P.C. as per which the named persons in the present applications were not implicated by the police to have committed any offence against the complainant. More so, the police has not even kept the named persons in column no.2 of the report under Section 173 of Cr.P.C. At this stage, after going through the statement on record, FIR, statement u/s 161 Cr.P.C.*

*and challan u/s 173 Cr.P.C. Furthermore, a tendency has cropped up in public at large to drag friends/relatives of the accused when it appears to the complainant that the recovery of money becomes next to impossible for them. Prima facie there is no ground made out for summoning the above named persons in the present case. Therefore, the present application stands declined being without merits and is disposed of accordingly.”*

Counsel for the petitioners has further submitted that this order has attained finality and it was never challenged before any higher Court.

In the meantime, the respondent No.2 filed a complaint under Sections 420 and 120-B IPC against the petitioners (Annexure P3).

Counsel for the petitioners has further argued that though in the complaint, there was no reference to FIR No.167, however, in the list of witnesses at Sr. No.5, the MHC of Police Station Civil Lines was cited as a witness with reference to FIR No.167.

Counsel for the petitioners has also submitted that thereafter, the trial Court on recording the preliminary evidence of the respondent/complainant and taking a note that on a complaint given by the complainant, FIR No.167 already stands registered against the accused persons, without resorting to the procedure under Section 201 Cr.P.C., has summoned the petitioners as accused vide impugned order dated 28.09.2015. The operative part of the said order, reads as under:-

*“4. I have heard the ld. counsel for the complainant and have gone through the case file very carefully.*

5. *The evidence of the complainant has gone un rebutted and unchallenged at this stage. The testimony of complainant is duly supported by the witnesses, who appeared in the witness box Prem Singh as CW2, Mahinder Singh as CW3, Rajwant Singh as CW4. This court is of the considered view that there is sufficient ground to summon the accused No.1 Amar Singh and accused No.2 Ranjit Kaur be summoned for offence u/s 420/120 B IPC for 20.10.15 on filing PF, copies of complaint and list of witnesses within 7 days.”*

The petitioners preferred a revision before the Court of Sessions which was also dismissed by the Revisional Court primarily on the ground that the trial Court has summoned the petitioners on the basis of the preliminary evidence and therefore, no infirmity is found in the case. It was also observed that mere dismissal of the application under Section 319 Cr.P.C. in the said case will have no bearing on the complaint case and it is not a ground to dismiss the same.

Feeling aggrieved against the said orders, the petitioners thereafter, have preferred the present petition before this Court.

Reply by way of affidavit of the Assistant Commissioner of Police North, Amritsar on behalf of the respondent – State filed in the Court is taken on record. Para 6 and 7 of the said reply is reproduced as follows:-

“6. *That it is most respectfully submitted that a detailed, thorough and impartial enquiry was conducted in this regard by the then Additional Deputy Commissioner of Police, City-1, Amritsar from all concerned and it was established that the petitioner No.1 and the respondent No.2 have some enmity on the account of some personal disputes as the petitioner No.1 who is Sanitary Inspector*

*in Municipal Corporation Amritsar had got appointed Gurprit Singh son of respondent No.2 in Malaria Department on temporary basis, who has been relieved from the temporary service. In addition to this, the petitioner No.1 had got engaged a girl relative of the respondent No.2, but this relation had got broken. The respondent No.2 was holding petitioner No.1 responsible for the same. For this reason, the respondent No.2 had been leveling false allegations against them, whereas Gurprit Singh son of the respondent No.2 had met Amarjit Kaur and he had given the amount to Amarjit Kaur directly for sending his brother Rajwant Kaur abroad. Consequently, the then Additional Deputy Commissioner of Police, City-1, Amritsar had recommended that the petitioners be declared innocent in the instant FIR; after obtaining legal opinion from Ld. D.A. Legal, the enquiry report submitted by the then Additional Deputy Commissioner of Police, City-1, Amritsar was approved by the Commissioner of Police, Amritsar and the petitioners were declared innocent, whereas only Amarjit Kaur was declared accused in instant FIR No.167 dated 19.05.2011 registered under Section 420 of IPC at P.S. Civil Lines, Amritsar City.*

7. *That it is most respectfully submitted that during the course of investigation carried out in the instant FIR No.167 dated 19.05.2011 registered under Section 420 of IPC at P.S. Civil Lines, Amritsar City, the accused Amarjit Kaur could not be arrested, hence, she was declared P.O. in this case vide order dated 10.03.2012 passed by Ld. C.J.M. Amritsar. Thereafter, challan against the P.O. Amarjit Kaur was presented in the jurisdictional Ld. Court on 26.07.2013 for adjudication. During trial, on the basis of statement got recorded by the respondent No.2 in the Ld. Trial Court, prosecution had moved an application*

*under Section 319 of Cr.P.C. for summoning of the petitioner to face trial as additional accused in the present case. This application was dismissed vide order dated 07.03.2015 (Annexure P-2), passed thereon by Ld. Trial Court. Thereafter, the case file has been consigned vide order dated 03.04.2015 passed by the Ld. trial Court of Sh. Amardeep Singh Ld. JMIC, Amritsar as the accused Amarjit Kaur has been declared P.O. However, efforts are still on for arrest of the PO Amarjit Kaur.”*

Separate reply by way of affidavit of respondent No.2 is also on record.

Counsel for the petitioners has argued that once the FIR No.167 on the same set of allegations was registered against the petitioners in which after the investigation, the police opted to submit the challan only against Amarjit Kaur finding the petitioners to be innocent, when the application under Section 319 Cr.P.C. was filed after some evidence was led by the same complainant (both FIR and the present complaint), the trial Court dismissed the application observing that no prima facie evidence has come to summon the petitioners in the said FIR case. Counsel for the petitioners has, thus, argued that once the FIR case is pending, the trial Court while summoning the petitioners in an independent complaint filed subsequently by the respondent/complainant for the same offence is not maintainable without following the procedure under Section 210 Cr.P.C.

Counsel for the petitioners has further argued that from the perusal of the summoning order, it is clear that the Magistrate was already aware of the fact that an FIR stands registered in respect of the same incident. Despite that without complying with the provisions of

Section 201 Cr.P.C., the trial Court is proceeding with the complainant.

Section 210 of the Cr.P.C reads as under :-

***“210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.-(1) When in a case instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.***

*(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.*

*(3) If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.”*

A perusal of the said Section makes it mandatory for the Magistrate to stay the proceedings of the enquiry or trial and call for a report on the matter from the police officer conducting the investigation.

Hon'ble the Supreme Court in the case of **Dilawar Singh vs. State of Delhi** reported as **(2008) 3 SCC (Criminal) 330**, held in paras 13 and 14 as under :-

*“13. The principle has been statutorily recognised in Section 210 of the Cr.PC which enjoins upon the Magistrate, when it is made to appear before him either during the inquiry or the trial of a complaint, that a complaint before the police is pending investigation in the same matter, he is to stop the proceeding in the complaint case and is to call for a report from the police. After the report is received from the police, he is to take up the matter together and if cognizance has been taken on the police report, he is to try the complaint case along with the GR case as if both the cases are instituted upon police report. The aim of the provision is to safeguard the interest of the accused from unnecessary harassment.*

*14. The provisions of Section 210 CrPC are mandatory in nature. It may be true that noncompliance of the provisions of Section 210 CrPC, is not ipso facto fatal to the prosecution because of the provision of Section 465 CrPC, unless error, omission or irregularity has also caused the failure of justice and in determining the fact whether there is a failure of justice the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings. But even applying the very same principles it is seen that in fact the appellant was in fact prejudiced because of the non- production of the records from the police.”*

Similar view has been taken by this Court in **“Jasbir Kaur and another vs Tirath Kaur”, 2014(2) Law Herald 1788.**

Counsel for the petitioners has also submitted that the Revisional Court has made an error in observing that the dismissal of the application under Section 319 Cr.P.C. for summoning the petitioners as an additional accused will have no bearing on the complaint case.

Counsel for the State on the basis of the affidavit of the

Assistant Commissioner of Police, North, Amritsar as noticed above in paragraphs 6 and 7 of the affidavit has not disputed that during the investigation in FIR No.167 Amarjit Kaur could not be arrested or was declared proclaimed offender and thereafter, the application filed by the complainant under Section 319 Cr.P.C. was dismissed.

Counsel appearing for respondent No.2/complainant has, however, opposed the prayer on the ground that the complainant has a right to file a separate complaint which is filed on the basis of an enquiry conducted by the Deputy Commissioner of Police on 28.06.2011 wherein it was found that the complainant – Amrik Singh has given an amount of Rs.7.50 lacs to the petitioners for sending his son Rajwant Singh to Canada and therefore, the complaint is maintainable.

In reply, counsel for the petitioners has argued that this report dated 28.06.2011 was duly considered by the Court while dismissing the application under Section 319 Cr.P.C. on 07.03.2015 and therefore, the same cannot be a basis to summon the petitioners.

After hearing the counsel for the parties, I find merit in the present revision petition.

A perusal of the FIR and the impugned complaint show that the allegations against the petitioners are in verbatim the same. It is an admitted case that when FIR No.167 was registered against the petitioners and Amarjit Kaur, the police on investigation submitted a report under Section 173 Cr.P.C. only against Amarjit Kaur in her absence as she was already declared a proclaimed offender. Thereafter, the complainant filed an application under Section 319 Cr.P.C. to

summon the petitioners as an additional accused which was dismissed by the trial Court, however, the petitioners never challenged the said order before the higher Court and it has attained finality.

The complainant when filed the impugned complaint before the Illaqa Magistrate, there is no reference to the FIR in the body of the complaint except that in the list of witnesses at Sr. No.5, the MHC is cited as a witness to place on record the said FIR and therefore, the complainant tried to conceal this fact from the notice of the Court. Even otherwise, a perusal of the impugned order passed by the trial Court dated 28.09.2015 show that the trial Court has noticed that with the same occurrence, the complainant has already registered the aforesaid FIR No.167, however, without adhering to the provisions of Section 210 Cr.P.C., the trial Court has summoned the petitioners.

The case of the petitioners is squarely covered by the judgment of the Hon'ble Supreme Court in "***Dilawar Singh's case (supra)***".

In view of what has been discussed hereinbefore, the present petition is partly allowed and the impugned order dated 28.09.2015 (Annexure P-4) passed by the trial Court as well as the order dated 03.12.2015 (Annexure P5) passed by the Revisional Court, are set-aside and the matter is remanded back to the trial Court to proceed further after adhering to the provisions of Section 210 Cr.P.C. in the light of ***Dilawar Singh's case (supra)***.

The parties through their counsel are directed to appear before the trial Court on or before 20.03.2020.

Upon appearance before the trial Court, the petitioners will

be released on bail on their furnishing bail/surety bonds to the satisfaction of the trial Court, if the bonds are not furnished earlier.

Disposed of.

20.02.2020

(ARVIND SINGH SANGWAN)

JUDGE

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|---------------------------|--------|
| Whether speaking/reasoned | Yes/No |
| Whether reportable:       | Yes/No |