

127

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

CRM-M-54945-2019

Date of Decision : January 23, 2020

Surjit Singh

.....Petitioner

Versus

State of Punjab and others

..RespondentS

Present : Mr. A.S. Sandhu, Advocate
for the petitioner.

Mr. Joginder Pal Ratra, DAG, Punjab.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for setting aside the order dated 2.11.2017 passed by the trial Court in FIR No.206 dated 19.10.2016 vide which the application filed under Section 319 Cr.P.C. was dismissed as well as the order dated 19.10.2019 passed by the revisional Court was dismissed.

Brief facts of the case are that the petitioner got the aforesaid FIR registered with the allegations that on 31.10.2011 he has paid money to one Kaur Singh and further payment to his relative Nachhattar Singh. Later on, the complainant came to know that the money was not paid to him and Kaur Singh has misappropriated the amount. It is further stated that Harpal Singh @ Pal Singh and Kaur Singh came to his house and informed that a doctor in America bring injunctions to cure diabetes and on that count he has paid the amount. However, the amount was not paid.

On completion of the investigation, the police submitted the challan against accused Harpal Singh @ Pal Singh under Sections 420 and 384 IPC. The trial Court framed the charge and recorded the statement of the

complainant who appeared as PW3. Thereafter, the petitioner filed an application under Section 319 Cr.P.C. for summoning Kaur Singh and Jaswinder Kaur as additional accused. In the application, the version given in the FIR was reiterated, The trial Court vide impugned order dated 2.11.2017 dismissed the application with the following observations :-

“Heard. Record perused. In the application Ex.PA moved by complainant Surjit Singh, on the basis of which FIR was lodged, there is no specific role attributed to accused Jaswinder Kaur. It is only in para 2 of the application Ex.PA, specific role of Kaur Singh was shown that he has told him that he was also sugar patient and he got treated well from the injections brought by a person from abroad. Except this, no other specific allegations were made in the complaint against the proposed accused. However, in the testimony before the Court, he deposed that on 31.10.2011 Kaur Singh took the money from him for the purpose of advancing the same to one Nachhattar Singh but this fact was not narrated in the complaint before SSP, Moga persons. Even in the inquiry conducted by DSP (City) Moga, he found nothing against Kaur Singh and Jaswinder Kaur and in his report. In the inquiry statement of Kaur Singh and Jaswinder Kaur were recorded in which they stated that Harpal Singh (main accused) is their son and he is drug addict. They had also disinherited from their estate in 2015 and he never came to that house from last one year. It is generally seen that family of the main accused is got involved by the complainant so that main accused be apprehended. Though PW Surjit Singh complainant has attributed the specific role to Kaur Singh and Jaswinder Kaur, but his such attribution to these persons is not sufficient as the

same is not in conformity with his first version made in the complaint Ex.PA. The attribution against the proposed accused is more like improvement in his version and the result of after thought. Moreover, the proposed accused persons Kaur Singh and Jaswinder Kaur had been given clean chit by the inquiry officer DSP (City), Moga in which, he categorically mentioned that no *prima facie* offence was made out against Kaur Singh and Jaswinder Kaur. Only *prima facie* case was made out against the present accused Harpal Singh and only accused Harpal Singh was challaned after that enquiry. Various statements were recorded by the enquiry officer regarding the allegations made in the complaint by the complainant. Moreover, in his cross examination PW3 Surjit Singh has admitted that Nachhattar Singh ever complained against Kaur Singh for not giving money to him. No other evidence has come on record regarding to support the claim of complaint against the proposed accused persons. In the judgment passed by Hon'ble Apex Court in **Joginder Yadav Vs. State of Bihar, 2015(3) RCR (Criminal) 935**, it was held that "*the extraordinary power under Section 319 of Cr.P.C. can be exercised only if very strong and cogent evidence occurs against a person from the evidence led before the Court. Standard of proof employed for summoning a person as an additional accused under Section 319 Cr.P.C. is higher than the standard of proof employed for framing the charge against an accused since inception.*"

As such, no *prima facie* offence is made out for trial against accused Kaur Singh and Jaswinder Kaur and it will be futile exercise to summon the said accused and charge them under the present case because of *prima facie*

case is made out against them. As such, the present application is dismissed.”

Thereafter, the preferred revision in the Court of Sessions. The Revisional Court re-appreciated of the entire evidence on record, especially the statement of complainant-petitioner-PW3 Surjit Singh dismissed the revision by passing the following order :-

“XXX XXX XXX XXX

8. I have carefully heard learned counsel for revisionist, learned counsel for respondents as well as learned Additional Public Prosecutor and have gone through the record of the case.

9. Ex.PA and Ex.PB are complaints filed by Surjit Singh leading to lodging of present FIR against Harpal Singh. Said complaints Ex.PA and Ex.PB had also been filed against Kaur Singh and Jaswinder Singh parents of accused Harpal Singh. FIR in question had also been lodged only against Harpal Singh after being enquired by DSP (City), Moga vide reports Ex.PW-16/A dated 4.07.2016 and Ex.PW-16/B dated 28.07.2016. In both said reports Harpal Singh was found to be involved in the impugned crime and recommendation was made for lodging FIR against Harpal Singh only. Accordingly present FIR was lodged only against accused Harpal Singh.

10. PW-3 complainant Surjit Singh during his examination-in-chief deposed that on 31.10.2011 complainant had paid money to Kaur Singh to pay the same to his relative Nachhattar Singh son of Mukand Singh. Complainant came to know that said money was not

paid by Kaur Singh to Nachhattar Singh. Thus Kaur Singh has misappropriated said amount. Original complaints Ex.PA and Ex.PB leading to lodging of present FIR are silent about said fact. PW-3 Surjit Singh during his cross-examination has stated that he is in possession of pronote vide which he had received loan from Nachhattar Singh relative of Kaur Singh. PW-3 has further admitted that he had not handed-over said pronote and receipt to police during investigation. PW-3 has also admitted that Nachhattar Singh had never complained against Kaur Singh for not giving money to him. Thus PW-3 claims that he had delivered money to Kaur Singh to hand-over the same to his relative Nachhattar Singh. Said money was not paid by Kaur Singh to Nachhattar Singh. It is strange that Nachhattar Singh has not made any complaint against Kaur Singh to complainant or any other person for not handing over the money to him. It has also remained unexplained that in case complainant Surjit Singh was in possession of pronote vide which he had advanced loan from Nachhattar Singh. Then what prevented Surjit Singh to hand-over said pronote and receipt to the police. It is despite the fact that large number of pronotes and receipts vide which complainant had received money from different person had been handed-over to police by complainant in order to prove source of money being handed-over to accused Harpal Singh.

11. PW-3 Surjit Singh has deposed that Harpal Singh and Kaur Singh came to his house and told him that a Doctor resident of America used to bring injections to cure diabetes from America. Kaur Singh had also received treatment from said Doctor and got cured. They also advised him to get treatment from said Doctor. On their

assurance a sum of Rs.30,000/- was paid by complainant to purchase the injections. PW-3 has deposed that after 4-5 days Harpal Singh and Kaur Singh came to his house and disclosed him that said Doctor has been arrested by Airport Authority and they demanded Rs.50,000/- from complainant to get Doctor released. Ex.PW-16/A is an enquiry report on the complaints Ex.PA and Ex.PB filed by complainant Surjit Singh to lodge present FIR. As per said report accused Harpal Singh was running a clinic in the village. Complainant Surjit Singh was suffering from diabetes. He not only used to take medicine from accused Harpal Singh but used to sit in the clinic of accused Harpal Singh. Complainant Surjit Singh and accused Harpal Singh were also found to be close and good friends. Thus Harpal Singh was running a clinic in the Village. Complainant and accused Harpal Singh were fast friends. So in case money was paid to bring injections by some Doctor from USA to cure diabetes of complainant. Then it would have been at the instance of accused Harpal Singh. Learned trial court has rightly held that aged parents of accused Harpal Singh are being sought to be arrayed as accused in the presence case in consonance with general trend that all family members of accused are sought to be impleaded as accused in a criminal case. There are no specific allegations against Jaswinder Kaur mother of accused Harpal Singh in complaints Ex.PA and Ex.PB. Matter had been enquired into by DSP (City) and nothing has been found against aged parents of accused Harpal Singh. DSP (City) in both reports dated 4.07.2016 and 28.07.2016 found that accused Harpal Singh had become a drug addict and used to beat his parents and indulged in theft. Accused Harpal Singh had been disinherited by his parents in the year 2015. Parents had got recorded statement that whereabouts of

accused Harpal Singh are not known to them for the last one year. It was also found during enquiry that a sum of Rs.30,000/- was received by accused Harpal Singh to get diabetes injections for the complainant. It is a settled principle of law that extra ordinary power under Section 319 of Cr.P.C. has to be used sparingly. Constitution Bench of Hon`ble Supreme Court in Hardeep Singh Versus State of Punjab, 2014(2) SCC (Criminal) 86 has held that 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 during course of such trial that materials are disclosed against the newly summoned accused and that summoning new accused will result in delay of trial. Thus degree of satisfaction for summoning the accused i.e. original and subsequent has to be different. It is certainly higher than the Test of *prima facie* Case adopted for serving the charge-sheet. In present case evidence on record do not satisfy the said test qua Kaur Singh and Jaswinder Kaur sought to be summoned as additional accused. While Harpal Singh son of Kaur Singh and Jaswinder Singh is already facing the trial.

14. In the light of above said discussion there is no sufficient evidence on record to conclude that Kaur Singh son of Daman Singh and Jaswinder Kaur wife of Kaur Singh have committed offence in question. So considering the totality of facts there is no merit in the impugned revision petition and accordingly the same is devoid of any merit and stands dismissed. Trial court record along with copy of this order be returned to the concerned court. Appeal file be consigned to the record room.”

Counsel or the petitioner has argued that Kaur Singh was specifically named in the FIR as accused by the petitioner and there are direct allegations against Jaswinder Kaur and Kaur Singh.

Counsel for the petitioner has submitted that from the statement of PW3, sufficient evidence has come on record to summon them as additional accused.

After hearing counsel for the petitioner, I find no merit in the petition for the following reasons :-

- (a) Both the Courts below has concurrently held that on perusal of the original complaints Ex.PA and Ex.PB filed by the petitioner which formed basis to register the present FIR, there are no allegations about the fact that Kaur Singh has misappropriated the amount;
- (b) Both the Court below further held that petitioner-PW3 has further admitted in his cross-examination that he is not handed over the pronote vide which he had made alleged payment to Kaur Singh and even Nachhattar Singh to whom the payment was to be made by Kaur Singh has not lodged any complaint or protest with the petitioner;
- (c) On careful perusal of the impugned orders it is apparent that PW3-petitioner has made improvements from the original version given to the police, in order to rope in the two proposed accused persons Kaur Singh and Jaswinder Kaur; and
- (d) It is also worth noticing here that the FIR pertains to the year 2016 and as on today, as many as 16 prosecution witnesses have already been examined.

Therefore, in view of the settled principle of law laid down by the Hon'ble Supreme Court in **2014 (1) RCR (Crimina) 623, Hardeep Singh Vs. State of Punjab and others**, wherein it is held that the decree of satisfaction for summoning an additional accused is different from summoning the original accused and the evidence should be more than *prima facie* evidence to satisfy that the additional accused are required to be summoned, this Court find no ground to differ with the well reasoned finding recorded by the Courts below.

In view of the above, there is no merit in the present petition and the same is, therefore, dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

January 23, 2020
satish

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO