

104

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

CRR-443-2022 (O&M)
Date of decision : 09.03.2022

Amandeep Singh

...Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Gurcharan Dass, Advocate for the petitioner.

Mr. Sarabjit S. Cheema, AAG, Punjab.

VIKAS BAHL, J. (ORAL)

CRM-8720-2022

Application is allowed, as prayed for.

Annexures P-1 to P-13 are taken on record, subject to all just exceptions.

Main case

Challenge in the present Criminal Revision is to the order dated 08.11.2021 vide which the present petitioner has been summoned under Section 319 of Cr.P.C.

Learned counsel for the petitioner has submitted that in the present case, FIR No.7 dated 18.01.2018 under Sections 344, 420 and 34 of the Indian Penal Code, 1860 and Sections 32 and 21 of the Narcotic Drugs

and Psychotropic Substances Act, 1985 was registered against four persons namely Jasvir Singh, Sandeep Sood, Parminder Singh and the present petitioner. In the FIR, the allegations were levelled to the effect that a raid was conducted in Jeevan Jot Rehabilitation Centre and it was found that the inmates were being kept in unhygienic conditions and were not even given hygienic food and on this basis, the FIR was registered and it has been argued that as per the prosecution version, Jasvir Singh and Sandeep Sood were co-owners of the De-addiction Centre and Parminder Singh and Amandeep Singh were stated to be the Ward Attendants. It is submitted that the detailed enquiry was conducted in the present case by the Superintendent of Police (Investigation), District Rupnagar and the detailed report was submitted on 23.06.2018, in which, it was found that although, Jasvir Singh was found to be Incharge of the Drug De-Addiction Centre and Parminder Singh, was the Ward Attendant but the present petitioner was not proved to be a Ward Attendant and it had been mentioned therein that in fact, the present petitioner was running his own shop since 2006. It is further submitted that even a perusal of the supplementary challan dated 10.09.2018 (Page 66 of the paper book) would show that a reference with respect to the enquiry conducted by the Senior Officers had been made therein and it was observed that no evidence had been found against the present petitioner and thus, accordingly, challan was presented against three co-accused namely Parminder Singh, Sandeep Sood and Jasvir Singh and the present petitioner was put in column No.2. It is contended that the trial Court, without even remotely considering the said report, has summoned the present petitioner under Section 319 of Cr.P.C. It is further contended that

the said enquiry report is part of the challan. It is argued that even a perusal of evidence of PW11 and PW12 (Annexures P-5 and P-6, respectively) would show that nothing specific has been stated against the present petitioner so as to make out a case for summoning him under Section 319 of Cr.P.C. He has relied upon the judgment passed by the Hon'ble Supreme Court in **Brijendra Singh and others Vs. State of Rajasthan**, reported as **2017(3) RCR (Criminal) 374**, to contend that in such a situation, it was incumbent upon the trial Court to consider the enquiry report, on the basis of which, the petitioner was found to be innocent.

Notice of motion.

On advance notice, Mr. Sarabjit S. Cheema, AAG, Punjab, appears and accepts notice on behalf of the State and has submitted that he is fully prepared to argue the matter and assist this Court. He has opposed the present Criminal Revision and has submitted that the petitioner has been rightly summoned under Section 319 of Cr.P.C. on the basis of the fact that he was named in the FIR and also on the ground that his name figures in the testimony of PW11 and PW12 (Annexures P-5 and P-6 respectively) and even an appointment letter was found to have been issued, in favour of the present petitioner.

This Court has heard the learned counsel for the parties and has perused the paper book.

FIR, in the present case, was registered on the basis of allegations levelled to the effect that when a raid was conducted in Jeevan Jot Rehabilitation Centre, it was found that in the said Centre, the inmates were kept in the upper room by locking them inside and the living room was

found to be unhygienic, poorly ventilated and the bathroom was also in a deteriorated condition and on interacting with the inmates, it was found that they were being forcibly kept in the said Centre. In the said case, a detailed enquiry was then conducted by the Superintendent of Police (Investigation), District Rupnagar, who, vide its report dated 23.06.2018, had stated that the present petitioner was not involved in the functioning of the said Centre. Relevant portion of the said report is reproduced hereinbelow:-

“In connection with the enquiry conducted by me into application, - applicant Tejinder Kaur party, owner of Jeevan Jot Foundation and concerned persons were joined into the enquiry and enquiry was conducted and statements were recorded. Besides this, the matter was discussed with the Investigating Officer of FIR No.7 dated 18.01.2018 under sections 345, 450, 34 IPC and 32 of NDPS Act, Police Station Sadar, Rupnagar and file of the case has been perused. From the statements recorded/documents produced and from the perusal of the case file, it has been revealed that Amandeep Singh son of applicant Tejinder Kaur is running a shop in Bhai Lalo Market. Rupnagar since 2006 under the name of Tejinder Finance Company, who started taking drugs in the year 2015, upon which applicant Tejinder Kaur firstly got admitted her son Amandeep Singh for treatment in Freedom Foundation (Regd.) Chandalon Jhingra Road, Kurali, where Amandeep Singh son of applicant Tejinder Kaur got treatment on different dates in Freedom Foundation (Regd.) Chandalon Jhingra Road, Kurali. Jasvir Singh son of Lachhman Singh had earlier opened Drug De-addiction Centre in village Shampura, District Rupnagar in the name of Jeevan Jot Foundation. Registration of this Jeevan Jot Foundation was valid from 01.11.2011 to 31.10.2014. Thereafter, Jasvir Singh son of

Lachhman Singh had opened this Centre at village Khuaspur. Amandeep Singh son of applicant Tejinder Kaur sometime used to stop taking drugs and sometime started taking drugs, due to which Tejinder Kaur had sent her son Amandeep Singh on 01.10.2015 to the Drug De-addiction Centre Jeevan Jot Foundation of Jasvir Singh for treatment. Thereafter, again Amandeep Singh was admitted in Freedom Foundation (Regd.) Chanalon Jhingran Road, Kurali. Amandeep Singh son of applicant Tejinder Kaur sometime stopped taking drugs and sometime he started taking drugs etc. again, due to which applicant Tejinder Kaur got admitted her son Amandeep Singh for treatment in Freedom Foundation (Regd.) Chanalon Jhingran Road, Kurali and sometime in Jeevan Jot Foundation Khuaspura. Parminder Singh son of Bhupinder Singh was serving as Ward Attendant in Jeevan Jot Foundation Centre of Jasvir Singh to whom Jasvir Singh had issued appointment letter/joining letter on 18.01.2016 and this appointment letter contains the signatures of Parminder Singh. Besides this, Amandeep Singh son of applicant Tejinder Kaur was also issued appointment letter/joining letter dated 28.04.2016 by Jasvir Singh, from the perusal of which, it has been revealed that on the appointment letter issued to Amandeep Singh, there are no signatures of Amandeep Singh son of applicant Tejinder Kaur and there are signatures of only Jasvir Singh owner. So, this appointment letter/joining letter has been kept after preparing by Jasvir Singh. Besides this, Parminder Singh, Ward Attendant has got recorded in his statement during enquiry that "in the year 2013 he started taking drugs etc. due to which he was got admitted for treatment in Jeevan Jot Foundation village Shampura in the year 2014 and was cured, due to which he started service in the same as Ward Attendant. Sandeep Sood, resident of

Zirakpur was also getting treatment from this Centre and he used to visit this Centre. In this Centre, Amandeep Singh son of Jagjit Singh, resident of Rupnagar had got treatment who used to take medicine from Kurali etc. Amandeep Singh is running his own shop. From the enquiry, it has been revealed that he has no concern with this Centre." On 18.01.2018, even at the time of conducting raid by the team. Amandeep Singh was not present in the Centre. This fact has been proved by owner Jasvir Singh, Parminder Singh and Sandeep Sood in their respective statements that for the last about 1-2 months, Amandeep Singh had not visited this Centre from which it becomes clear that Amandeep Singh was not doing any service in this Centre.

So, from the enquiry conducted by me, statements recorded and perusal of file of the case and open and secret enquiry, it has been revealed that Amandeep Singh son of applicant Tejinder Kaur started taking drugs and he was taking drugs for which he got treatment from Freedom Foundation (Regd.) Chanalon Jhingran Road, Kurali and Jeevan Jot Foundation Khuaspura owned by Jasvir Singh son of Lachhman Singh. Registration of Jeevan Jot Foundation was valid from 01.11.2011 to 31.10.2014. Amandeep Singh son of applicant Tejinder Kaur some time stopped taking drugs and sometime started taking drugs, due to which applicant Tejinder Kaur got treatment of her son Amandeep Singh at different times from Freedom Foundation (Regd.) Chanalon Jhingran Road, Kurali and Jeevan Jot Foundation Khuaspura. In Jeevan Jot Foundation Centre, Parminder Singh was doing the service of Ward Attendant. From the attendance register found at the time of raid on 18.01.2018 in which names of members of the Institution have been mentioned, the said register is also lying vacant since long and no one has been marked

present, from which it is clear that Amandeep Singh is not visiting this Centre since long, but as per record of the Institution, he definitely continued coming to get his treatment from this Centre. So, this appointment letter of Amandeep Singh has been prepared by Jasvir Singh himself. During enquiry, this fact has also come to light that no evidence has come to light that Jasvir Singh owner was giving any salary/allowances to Amandeep Singh due to which no proof has come to light regarding doing service by Amandeep Singh in Jeevan Jot Foundation Khuaspura. So in my opinion, Amandeep Singh son of applicant Tejinder Kaur is found innocent in FIR No.7 dated 18.01.2018 under sections 345, 450, 34 IPC and 32 of NDPS Act registered in Police Station Rupnagar. If approved, suitable orders may be passed directing SHO, Police Station Sadar, Rupnagar to present challan against remaining accused in the Court by keeping Amandeep Singh in column No.2.

Report is submitted.

Total 23 pages

Sd/- 23.6.18

Superintendent of Police (Investigation)

District Rupnagar.”

A perusal of the said report would show that it was found during the course of enquiry that the petitioner had been running a shop since 2006 and had started taking drugs in the year 2015 and for some period, had received treatment from Jeevan Jot Foundation and thereafter, also got treatment from Freedom Foundation. It was further found that in the said Jeevan Jot Foundation, Parminder Singh was serving as a Ward Attendant at the De-addiction Centre and Jasvir Singh, who was the owner of the said Jeevan Jot Foundation, had issued the appointment letter/joining letter dated 18.01.2016 to the said Parminder Singh, which was signed by

Parminder Singh also. It was further found that as far as the alleged appointment letter issued in favour of the present petitioner is concerned, the same did not bear signatures of Amandeep Singh (present petitioner) and the same bore only the signatures of Jasvir Singh, who was the owner of the said Centre. It was found that the present petitioner had only received treatment from the said Jeevan Jot Foundation for some time and that he was running his own shop and had no concern with the said Jeevan Jot Foundation. It was further found that on the date of raid i.e. on 18.01.2018, the petitioner was not found at the Centre and from the respective statements of the co-accused, it was proved that since 2 months prior thereto, the petitioner had not visited the Centre and it was thus, clear that he had nothing to do with the said Centre and found that on the basis of enquiry report, the petitioner was shown in column No.2 whereas the other three accused were challaned. It has been pointed out that even in the supplementary challan dated 31.08.2018, reference had been made to the enquiry conducted by Senior Officers and it was observed that there was no evidence against the present petitioner and thus, he was put in column No.2. It is further pointed out that it is apparent from page 67 of the paper book that the enquiry report was a part of the challan since in the list of documents mentioned, there is a reference to the Enquiry Report and the said Enquiry Report has been attached alongwith the present Criminal Revision as Annexure P-3. A perusal of the impugned order dated 08.11.2021 would show that no reference has been made to the said Enquiry Report. The Hon'ble Supreme Court in ***Brijendra Singh's case*** (Supra), has held as under:-

“Thus, the ‘evidence’ recorded during trial was nothing more than the statements which was already there under [Section 161](#) Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether ‘much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny.

As a consequence, this appeal is allowed setting aside the order of summoning the appellants under [Section 319](#) Cr.P.C.”

It was observed in the said case that once in case, the police, after detailed investigation, has collected the evidence and has given substantial reasons for not proceeding against the petitioner, then it is incumbent upon the trial Court to consider the said report and, after considering the same, to see as to whether much stronger evidence than the

mere possibility of the complicity of the petitioner has come on record. In the said case, the Hon'ble Supreme Court observed that there could be a possibility that the report was not brought to the notice of the trial Court but since, even the High Court had ignored the same, in spite of the fact that it had been specifically brought to the notice of the High Court, thus, the order summoning the accused therein under Section 319 of Cr.P.C., was set aside.

In view of what has been observed in the judgment reproduced hereinabove and keeping in view the facts and circumstances of the case, the present Criminal Revision is allowed and the impugned order dated 08.11.2021 is set aside. The trial Court is directed to reconsider the entire matter and pass a fresh order on the application under Section 319 of Cr.P.C. after considering the abovesaid aspects. The same be done within a period of two months from the date, the certified copy of the present order is received by the trial Court.

The petitioner through his counsel in the trial Court would also inform the trial Court about the passing of the present order.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid judgment.

09.03.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:-****Yes/No****Whether reportable:-****Yes/No**