

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : CRM-M-9765-2021 (O&M)

Date of Decision : September 30, 2022

Akashdeep Babbar

.... Petitioner

vs.

State of Punjab and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR.

* * *

Present : Mr. Aditya Dassaur, Advocate
for the petitioner.

Mr. Amit Shukla, AAG, Punjab
for respondent no.1 – State.

Mr. A. S. Manaise, Advocate
for respondents no.2 and 3.

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NAMIT KUMAR, J. (Oral) :

This petition has been filed by the petitioner under Section 482 Cr.P.C. impugning the order dated 11.09.2019 passed by the Court of learned Judicial Magistrate Ist Class, Gurdaspur (Annexure P-9), vide which the application filed by the prosecution under Section 319 Cr.P.C. for summoning the petitioner as an additional accused has been partly allowed and the petitioner has been summoned as an additional accused in case FIR No.28 dated 06.03.2018, registered under Sections 420, 467, 468, 471, 120-B IPC, at Police Station Dhariwal, District Gurdaspur and the order/judgment dated 20.02.2020 (Annexure P-11) passed by the Court of learned Additional Sessions Judge, Gurdaspur, whereby the said order of learned Judicial Magistrate Ist Class, Gurdaspur has been affirmed and

upheld, by dismissing the revision petition filed by the petitioner.

The brief facts, as have been pleaded in the petition are that one Gurpreet Singh son of Daljit Singh submitted a complaint against Kanwaljit Kaur wife of Rachhpal Singh and Rachhpal Singh son of Rattan Singh for cheating by alluring to provide job in the Education Department to his wife Ramanjeet Kaur. It has further been pleaded that on the said complaint, inquiry was conducted by Deputy Superintendent of Police, Special Branch, Gurdaspur and in the said inquiry, it was concluded that Gurpreet Singh, Akashdeep Babbar (present petitioner), Balbinder Singh, Gurpreet Singh, Ajmer Singh, Bunti Masih, Navdeep Singh and Mandeep Singh paid a total sum of Rs.2,90,00,000/- to Kanwaljit Kaur, Rachhpal Singh and his brothers – Malkiat Singh and Jaswant Singh and they defrauded the victims by giving them fake appointment letters and therefore, it was recommended vide inquiry report dated 17.11.2017 (Annexure P-1) to register an FIR. Consequently, FIR No.28 dated 06.03.2018 under Sections 420, 120-B, 467, 468, 471 IPC was registered at Police Station Dhariwal, District Gurdaspur against Kanwaljit Kaur, her husband Rachhpal Singh, Malkiat Singh and Jaswant Singh.

During investigation, accused Malkiat Singh and Kanwaljit Kaur were arrested in this case and challan was presented in the Court on 02.06.2018 and the charges were framed on 01.08.2018. Thereafter, other two accused namely Rachhpal Singh and Jaswant Singh were arrested in this case and supplementary challan was presented in the Court on 11.12.2018.

Thereafter, the prosecution filed an application dated 19.07.2019 under Section 319 Cr.P.C. (Annexure P-8) for summoning the

present petitioner – Akashdeep Babbar, Anuradha Babbar and Usha Babbar as an additional accused. The said application was dismissed qua Anuradha Babbar and Usha Babbar and was accepted qua the present petitioner. Consequently, the petitioner was summoned as an additional accused vide order dated 11.09.2019 (Annexure P-9) and the relevant portion from the said order reads as under :-

*“Perusal of file reveals that complaint moved by complainant Gurpreet Singh, which is placed on file as Ex.P3, was marked to DSP, upon which both the parties were called by DSP for investigation. **The complainant Sunita Abrol in her statement before the Court has categorically alleged that Akashdeep Babbar took the amount of Rs. 6,50,000/- from their house for securing job for her. Similarly this alleged fact has been reiterated by complainant Palvi. Therefore, the evidence collected by the Court shows that accused Akashdeep Babbar had received the money for securing job for complainant. It is also on the file that Kawaljit Kaur gave the cheque for repayment of the amount, so received by her from Gurpreet Singh, therefore, prima facie involvements of accused Akashdeep Babbar is found, at this stage, by this Court. The name of other accused namely Anurada Babbar and Usha Babbar has been mentioned as accompanying the accused, therefore, it cannot be said that the accused had active role to play. Therefore, on the basis of evidence on the file, the accused Akashdeep Babbar is liable to be summoned under Section 319 Cr.P.C.***

*The law with regard to summoning under Section 319 Cr.PC has been crystallized in **Hardeep Singh vs. State of Punjab and others** reported as **2014(1) RCR (Criminal) 623 (SC)** whereby Hon'ble Supreme Court has held that "Section 319 Cr.P.C springs out of the doctrine *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr.P.C. It is the duty of the Court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial."*

It is further held that "Section 319 Cr.P.C 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, has to necessarily not be an accused already facing trial. He can either be a person named in Column 2 of the charge-sheet filed under Section 173 Cr.P.C or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence."

It is further held by Hon'ble Supreme Court that "The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law

and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at time, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.”

Accordingly, in view of the above discussion, the application under Section 319 Cr.P.C is partly allowed. Accused Akashdeep Babbar is ordered to be summoned as additional accused for 24.09.2019.”

The said order was impugned by the petitioner by filing a Revision Petition before the Court of learned Additional Sessions Judge, Gurdaspur and the same was dismissed vide order dated 20.02.2020.

Hence this petition.

The petitioner has impugned the orders dated 11.09.2019 passed by the Court of learned Judicial Magistrate Ist Class, Gurdaspur and dated 20.02.2020 passed by the learned Additional Sessions Judge, Gurdaspur in the present petition. It has been vehemently argued by learned counsel for the petitioner that the Courts below have considered the matter in a very casual manner and have summoned the petitioner as an additional accused by considering the prima facie involvement of the petitioner, whereas any person can only be summoned as an additional accused if there is overwhelming evidence against him. To support his contention, he has placed reliance upon a Constitutional Bench judgment in Hardeep Singh

(supra).

On the other hand, learned counsel for respondents no.2 and 3 has argued that the present case involves a big scam of Rs.2,90,00,000/- wherein accused persons have cheated and allured many innocent people on the pretext of providing them jobs in the Education Department and then offering them fake appointment letters and respondents no.2 and 3 are the victims of the crime who have been cheated of Rs.6,50,000/- each by the petitioner on the pretext of providing job in the Education Department and later, the petitioner handed over them the fake appointment letters. He further submits that respondent no.2 – Sunita Abrol was examined as PW-1 before the learned Trial Court whereas respondent no.3 – Pallavi was examined as PW-2, who have levelled specific and categoric allegations against the petitioner, which are evident from their depositions (Annexures P-6 and P-7). The statements of PW-1 – Sunita Abrol and PW-2 – Pallavi read as under :-

“Stated that I am educated upto B.Ed ETT and was searching job. My husband is running a shop near Babe Nanki College, Dhariwal. Akashdeep Babber S/O Prem Nath Babber R/O Dadwa Road, Dhariwal was well known to my husband. One day, Akashdeep Babber had come to our house and told my husband that your wife is well educated and I know one Kawaljit Kaur W/O Rachpal Singh R/O Ahmadabad, who is working in Education Department and she is having a well approach in education department and she can arrange a job for your wife (i.e. me) and for this purpose we have to give Rs.6,50,000/-

to Akashdeep Babber for the purpose of my job as demanded by Akashdeep Babber. Thereafter prior about 3 years ago, Akashdeep Babber along his wife Anuradha Babber had come to our house and in my presence my husband had given Rs.6,50,000/- to Akashdeep Babber for the purpose of my job as demanded by the Akashdeep Babber. Thereafter Akashdeep Babber along his wife left our house. Thereafter, 15 days, later Akashdeep Babber came to our house and given us a letter no.178 dated 25.07.2017 and told me to join within 15 days after conducting medical in Senior Secondary School (Girls), Dharampura Colony, Batala. When I alongwith my husband had gone to Senior Secondary School (Girls), Dharampura Colony, Batala for joining as per the letter and there came to know that the aforesaid letter is forged one as such Akashdeep Babber alongwith other accused Kawaljeet Kaur, Rachpal Singh, Gurpreet Singh etc. dishonestly inducing me and my husband and had taken Rs.6,50,000/- from us on the protest of get me on job in Education Department. My statement was recorded. When we approached Akashdeep Babber demanded our money back then he had given two cheques of account of Gurpreet Singh which was later on dishonored. My forged appointment letter no.178 dated 25.07.2017 is Ex.P1. I identify the accused present in the court today.

At this stage, examination in chief is deferred on the request of Ld.APP for State as he wants to move application u/s 319 Cr.P.C. Request heard

and allowed.”

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“Stated that I am educated upto B.Ed ETT and was searching job. Akashdeep Babber S/O Prem Nath Babber R/O Dadwa Road, Dhariwal was well known to my father. One day, Akashdeep Babber had come to my house and told my father that your daughter is well educated and I know one Kawaljit Kaur W/O Rachpal Singh R/O Ahmadabad, who is working in Education Department and she is having a well approach in Education Department and she can arrange a job for your daughter (i.e. me) and for this purpose we have to given Rs.6,50,000/-. Thereafter prior about 3 years ago, Akashdeep Babber along his mother Usha Babber had come to our house and in my presence my father had given Rs.6,50,000/- to Akashdeep Babber for the purpose of my job as demanded by Akashdeep Babber. Thereafter, Akashdeep Babber alongwith his mother left our house. Thereafter, 15 days, later Akashdeep Babber came to our house and given us a letter no.182 dated 25.07.2017 and told me to join within 15 days after conducting medical in Senior Secondary School, Runniya, Dhariwal. When I alongwith my father had gone to Senior Secondary School, Runniya, Dhariwal for joining as per the letter and there came to know that the aforesaid letter is forged one as such Akashdeep Babber alongwith other accused Kawaljeet Kaur, Rachpal Singh, Gurpreet Singh dishonestly inducing me and my father and had taken Rs.6,50,000/- from us on the protest of get me on

job in Education Department. My statement was recorded. When we approached Akashdeep Babber demanded our money back then he had given two cheques of account of Gurpreet Singh which was later on dishonored. My forged appointment letter no.182 dated 25.07.2017 is Ex.P2. I identify the accused present in the court today.

At this stage, examination in chief is deferred on the request of Ld.APP for State as he wants to move application u/s 319 Cr.P.C. Request heard and allowed.”

I have heard learned counsel for the parties and have gone through the case file.

Section 319 Cr.P.C. 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 a fresh, 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 perusal of Section 319 Cr.P.C. reveals that where in the course of any inquiry 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. The language of Section 319 Cr.P.C. is very clear that any person not being the accused, if has committed any offence, can be tried with the accused.

The four primary allegations which come out from the said statement(s) against the petitioner are :-

1. The petitioner promised job to the victims in lieu of money.
2. The petitioner took Rs.6,50,000/- from the victims to provide them job.
3. The petitioner handed over fake appointment letters to the victims.
4. When victims demanded their money back, then petitioner handed over them cheques of

the account of Gurpreet Singh, which were dishonoured.

and therefore, the learned Trial Court has rightly summoned the petitioner as an additional accused under Section 319 Cr.P.C., vide order dated 11.09.2019 and the said order has rightly been upheld by the learned Revisional Court vide order dated 20.02.2020.

The learned Trial Court while examining the statements of PW-1 – Sunita Abrol wife of Raman Abrol and PW-2 – Pallavi daughter of Jawahar Lal and the evidence collected during the trial, has concluded that the accused Akashdeep Babbar had received the money for securing job and Kanwaljit Kaur gave the cheque for repayment of amount so received by her from Gurpreet Singh. Therefore, prima facie involvement of the present petitioner – Akashdeep Babbar was found and therefore, the petitioner has been summoned as an additional accused under Section 319 Cr.P.C.

The Hon'ble Supreme Court in the landmark judgment, in the case of Hardeep Singh (supra), has framed one of the following issues :-

“5(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?”*

and the same was answered in para 71 of the judgment which reads as under :-

“71. *It is, therefore, clear that the word “evidence” in [Section 319](#) Cr.P.C. means only such evidence as is made before the court, in*

relation to statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the Court to decide whether power under [Section 319](#) Cr.P.C. is to be exercised and not on the basis of material collected during investigation.”

The Hon'ble Supreme Court also held in the said judgment as

under :-

“98. *Power under [Section 319](#) Cr.P.C. is a discretionary and an extra- ordinary power. It 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.*

99. *Thus, we hold that 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 unrebutted, would lead to conviction. In the absence of such satisfaction, the*

court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."

The test as laid down by the Hon'ble Constitution Bench for invoking power under Section 319 Cr.P.C. *inter alia* includes the principle that only when strong and cogent evidence occurs against a person from the evidence, the power under Section 319 Cr.P.C. should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by the Supreme Court, is one which is more than prima facie case which is applied at the level of relevant proceedings.

Therefore, it is clear that there was sufficient cogent and convincing evidence before the Court in the shape of depositions of PW-1 and PW-2 wherein specific and categoric allegations of cheating and forgery have been levelled against the petitioner.

I am of the considered view that the Trial Court has exercised its power under Section 319 Cr.P.C., on the basis of deposition of the PW-1 and PW-2, which would suffice in law to invoke the power under Sections 319 Cr.P.C.

In view of the facts narrated above and settled proposition of

law, no illegality or perversity is found in the orders/judgments passed by the Trial Court and Revisional Court. Therefore, the present petition lacks merit and is accordingly dismissed with no order as to costs.

Pending applications, if any, would also stand dismissed in view of the aforesaid judgment.

September 30, 2022

monika

(NAMIT KUMAR)

JUDGE

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>