

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

Sr. No.255

1.

CRM-M-38081-2018

Date of decision : 20.9.2022

Sunita Sharma

.....Petitioner(s)

VERSUS

State of Punjab and another

..... Respondent(s)

2.

CRM-M-38610-2018

Indu Nagpal and others

.....Petitioner(s)

VERSUS

State of Punjab and another

..... Respondent(s)

3.

CRM-M-40329-2018

Rakesh Sharma and another

.....Petitioner(s)

VERSUS

State of Punjab and another

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Sanjiv Gupta, Advocate for the petitioners

Mr.Manipal Singh Atwal, DAG, Punjab

Mr.APS Rana, Advocate for respondent No.2

AMAN CHAUDHARY, J.

Three petitions bearing CRM-M-38081, 38610 and 40329-M-2018 are being disposed of way of a common judgment as the petitioners have been summoned vide the same order dated 9.3.2018. For the sake of brevity the facts are extracted from the main case bearing CRM-M-38081-2018.

Challenge in these petitions filed under Section 482 Cr.P.C. is

to the summoning order dated 9.3.2018, Annexure P-7, issued under Section 319 Cr.P.C. by learned trial Court in FIR No.70 dated 7.4.2014, registered under section 420 and 120 B IPC at Police Station City Kharar.

Shorn of all unnecessary details, that UCO bank had advanced a loan of Rs.13 lakhs to the accused in the FIR i.e. Sanjeev Kumar for purchase of a house, which after due permission was disbursed by the Zonal Officer vide letter dated 17.5.2008, Annexure P-1. The accused Sanjeev Kumar defaulted in repaying the loan amount and was classified as NPA (Non performing assets) and accordingly, the bank proceeded against him under the SARFAESI Act 2002. One Gurmeet Kaur, respondent no.2 herein lodged FIR No.70 dated 7.4.2014 against the accused Sanjeev Kumar and one Sukhwinder Singh by stating that a fraud had been played upon her inasmuch as her residential house has been sold instead of that of accused Sanjeev Kumar. Learned counsel for the petitioners submits that challan was presented in the said case on 12.4.2016 and charges were framed by the learned trial Court vide order dated 2.5.2016 against accused Sukhwinder Singh. He makes a pointed reference at this stage, to the fact that petitioners were neither named in the FIR nor in the challan.

Learned counsel now proceeded to refer to an application filed under Section 319 Cr.P.C. through Public Prosecutor on 9.3.2018 for arraying the officials of UCO Bank as accused. There is not even a mention of any role that they may have except that three of them have been stated to have affixed the demand notice at the door of the building of the complainant, sealed the same and took possession and others have got the house of the complainant auctioned. There is no reference regarding these accused to have even been privy to the property documents submitted by the

co-accused Sanjeev Kumar or Sukhwinder Singh. Even as per the averments in the application, these persons have not been given any role as regards scrutiny of documents submitted to obtain the loan or that they had conducted due diligence with regard to the mortgaged property. Pasting of notice or auction is a mere consequence of the documents have been submitted with regard to which there is no averment and the trial Court without even proceed to form a prima facie opinion issued the summoning order.

It is the contention of the learned counsel for the petitioners that firstly, Section 32 of SARFAESI, 2002 protects the officers of the bank for anything done or omitted to be done in good faith under the Act. Secondly, the petitioners were not even posted in the Branch either when the loan was applied or security documents were submitted or at the time of disbursement of loan was made with due permission by the Zonal Officer, Chandigarh vide letter dated 17.5.2008. A perusal of impugned order reveals that the application under Section 319 Cr.P.C. has been allowed merely on the no objection given by the defence counsel in his statement.

Learned counsel relies on the judgments of Hon'ble the Supreme Court of India in the case of **Jang Singh vs. Brij Lal and another** AIR 1966 SC 1631, to buttress his arguments.

Per contra, counsel for respondent No.2 submits that the order impugned has rightly been passed in view of the averments made in the application as well as based on the no objection given by the defence counsel for allowing the application.

Heard the learned counsel for the parties at considerable length.

It would be apposite to refer to the judgment of the Hon'ble

Supreme Court of India in the case of **Sagar vs. State of U.P.** Criminal Appeal No.397 of 2022 decided on 10.3.2022, while relying upon the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in case of **Hardeep vs. State of Punjab and another** (2014) 3 SCC 92, wherein the scope and ambit of Section 319 Cr.P.C. has been well settled.

Pare no.9 of the same reads thus:

“9. The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above 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. The learned Single Judge of the High Court has even failed to consider the basic principles laid down by this Court while invoking Section 319 of the Code, which has been considered by the learned trial Judge under its order dated 30th January, 2018.”

The Hon'ble Supreme Court of India in the case of **Ramesh Chandra Srivastava vs. State of U.P. and another**, Criminal Appeal No.990 of 2021, decided on 13.9.2021, had also set aside the summons issued purporting to invoke power under Section 319 Cr.P.C. to bring in newly summoned person to the Court. The relevant part of the said judgment reads thus:

“After hearing learned counsel for the respondents, who, no doubt, point out that the deposition of the second respondent as given by her, would suffice in law for the Court to invoke the power under Section 319 Cr.P.C., we are of the view that the matter must be reconsider.

We say this for the following reason:

The test as laid down by the Constitution Bench of this Court 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 this Court, is one which is more than *prima facie* case which is applied at the time of framing of charges.”

This Court finds it incredulous that the trial Court without even first arriving at a *prima facie* view with regard to involvement of the petitioners in the case issued the summoning order. Scrutinizing the impugned order, makes it apparent that it is only on account of the no objection given by the defence counsel, that the application under Section 319 Cr.P.C. has been allowed without recording its satisfaction to an extent that the evidence if goes unrebutted, would lead to conviction. The order reveals that it falls completely within the term 'casual and cavalier' manner referred to in the aforesaid judgments by the Hon'ble Supreme Court of India to hold that such order was unsustainable in the eyes of law.

In light of the aforestated discussion and in view of the peculiarity of the facts and circumstances of the case, as well as the law laid down in the cases of **Sagar** and **Ramesh Chandra Srivastava** (*supra*), lead this Court to an inducible conclusion that the trial Court has committed manifest error by embarking upon summoning the petitioners on basis of no objection by defence counsel and not even forming a *prima facie* opinion, to set aside the impugned order, being *ex facie* perverse.

Resultantly, the present petitions are allowed and the order dated 9.3.2018, Annexure P-7, is set aside.

In view of the same, it is necessary to direct the Sub Divisional Judicial Magistrate, Kharar to consider the matter afresh in the light of the principles and law enunciated in the afore referred cases.

Nothing herein shall be treated as an expression on the merits of the case and the trial Court shall proceed and decide the matter, independent of any observation made in the present order, which was only for the purpose of deciding the present petitions.

20.9.2022		(AMAN CHAUDHARY)
gsv		JUDGE
Whether speaking/reasoned	:	Yes / No
Whether reportable	:	Yes / No