

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

(203)

CRM-M-4509-2018

Date of Decision: 29.04.2022

Jaswant Singh

--Petitioner

Versus

State of Punjab

--Respondent

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Abhimanyu Kalsi, Advocate for the petitioner.

Ms. Sakshi Bakshi, A.A.G., Punjab.

RAJESH BHARDWAJ.J (Oral)

The present petition has been filed under Section 482 Cr.P.C praying for setting aside of order dated 4.9.2017 (Annexure P-8) passed by learned Addl. Sessions Judge, Sangrur and order dated 18.3.2017 passed by learned CJM, Sangrur whereby application filed under Section 319 Cr.P.C for summoning the accused in case FIR No.64 dated 24.4.2014 under sections 498-A, 406, 494 IPC registered at Police Station, Bhawanigarh has been allowed.

As per facts of the case, present FIR was lodged by the Kamaljit Kaur wife of Major Singh. The sum and substance of the allegations in the FIR was that she was married with Major Singh on 31.1.2009. Her parents gave sufficient dowry as per demands of the accused. Thereafter marriage was registered before the Registrar Marriages, Sangrur on 12.2.2009. Major Singh assured the complainant to take her to Canada. Her documents like passport, education certificates etc. were taken by her husband Major Singh and he went to Canada. He telephonically kept assuring the complainant for taking her to Canada but did not do so. In the meanwhile she was turned out of the matrimonial home by her in-laws.

Major Singh stopped calling her from Canada. Thereafter, Major Singh in order to deprive the complainant of her right in the property, transferred Kothi No.14-15 SST Nagar, Sangrur in the name of his friend Jaswant Singh i.e. the present petitioner. Though, Major Singh's brother Malkit Singh and his wife Sarabjit Kaur along with their family were living in the same. It was alleged that due to the illegal acts of all the accused the life of the complainant was ruined and thus the prayer was made to take action against the culprits.

After completion of investigation the challan was presented against the husband, whereas the petitioner was kept in column no.2. Learned Trial Court started examining the prosecution witnesses. Complainant Kamaljit Kaur was examined as PW-1 and she reiterated her allegations as made in the FIR against the petitioner. On the basis of her deposition, complainant filed an application under Section 319 Cr.P.C for summoning Jaswant Singh as additional accused to face trial along with other co-accused. Learned Trial Court heard both the parties and allowed the application filed under Section 319 Cr.P.C for summoning Jaswant Singh as additional accused vide its order dated 18.3.2017. Aggrieved, the petitioner filed a revision petition impugning the order dated 18.3.2017 in the court of learned Addl. Sessions Judge, Sangrur. After hearing the parties and appreciating the facts on record, learned Addl. Sessions Judge, Sangrur dismissed the same and thus upheld the view taken by the learned Trial Court vide his order dated 4.9.2017. Aggrieved by the views taken by both the courts below, petitioner has approached this Court by way of present petition.

Learned counsel for the petitioner has vehemently contended that the view taken by both the courts below is totally unsustainable in the eyes of law. Counsel submits that though some false and frivolous allegations were levelled against the petitioner, however, during investigation no truth was found against the petitioner. He submits that at the time of presentation of challan the allegations were duly investigated and the petitioner was found innocent. Resultantly the petitioner was kept in column no.2. Counsel submits that the allegations of the sale deed of the house in question in favour of the petitioner was a genuine transaction. The in-laws of the complainant had duly sold the house in question to the petitioner and thus there was no conspiracy whatsoever on the part of the petitioner as alleged by the complainant. He has submitted that the petitioner was found innocent in multiple inquiries and he was rightly declared innocent by the investigating agency. He submits that both the courts below have failed to appreciate the evidence on record and the law settled on the same and thus have drawn wrong conclusion in summoning the petitioner to face trial. He submits that the impugned orders deserve to be quashed in the interest of justice.

On the other hand, learned State counsel has controverted the submissions made by counsel for the petitioner. He has submitted that there are specific allegations against the petitioner since beginning, though, during investigation the petitioner was found innocent, however, the complainant while appearing as PW-1 before the Trial Court has deposed about the complicity of the petitioner in conspiring with the co-accused. He submits that the fact of second marriage of Major Singh with the complainant was initially concealed from her. He further submits that the

sale deed of house in question in favour of the petitioner was also part of the conspiracy played by the petitioner in collusion with the co-accused and thus he has been rightly summoned by the courts below to face trial.

I have heard learned counsel for the parties at length and have gone through the record carefully.

The complainant has named the petitioner along with co-accused in the FIR since beginning. The investigating agency though declared the petitioner innocent, however, the complainant was examined by the Trial Court as PW-1 and she reiterated the allegations against the petitioner regarding his conspiracy in concealing the fact of second marriage of Major Singh with the complainant. She also deposed about the transfer of house in question by way of sale deed in favour of the petitioner in a clandestine manner. On appreciation of the evidence on record the courts below have found that the sale deed executed by Malkit Singh and Sarabjit Kaur of the house in question in favour of the petitioner was nothing but a sham transaction in order to defeat the rights of complainant Kamaljit Kaur. It was also deposed by the complainant that the petitioner had abetted the crime under Section 494 IPC that he stood witness to the second marriage knowing that Major Singh was already married at that time. For the decision of the issue in hand the appreciation of Section 319 Cr.P.C is most relevant, which 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 afresh, 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.”

The Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab and others, 2014(1) RCR (Criminal) 623*** held 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 un rebutted, 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.”

It has been held by the Hon'ble Supreme Court that the power of summoning under Section 319 Cr.P.C. is an extraordinary power which cannot be used in a cavalier manner and the same has to be used sparingly. The satisfaction of the Court for summoning the additional accused under Section 319 Cr.P.C. should be more than the satisfaction required for framing of the charge. The facts and circumstances of the present case when tested on the anvil of settled law would qualify for accepting the application filed under Section 319 Cr.P.C. It is apparent that the complicity of the petitioner in the case is since beginning. Simply because he was declared innocent during inquiries, is not sufficient enough to decline his summoning under Section 319 Cr.P.C. After appreciating the facts and circumstances of the case and evidence on record both the courts below have found the petitioner liable to face the trial along with co-accused. Thus, this Court finds no infirmity in the conclusion arrived at by both the courts below in summoning the petitioner as additional accused under Section 319 Cr.P.C and hence the petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

29.04.2022

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No