

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

**CRR-2518-2017(O&M)
Date of Decision:02.06.2022**

Parveen and another

... Petitioners

Versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by:- Mr. Rajiv Joshi, Advocate for the petitioners.

Ms. Samina Dhir, DAG, Punjab.

Mr. Vaibhav Jain, Advocate for complainant.

KARAMJIT SINGH, J.

The petitioners have filed the present revision petition against the order dated 10.04.2017 passed by the Court of Judicial Magistrate 1st Class, Jalandhar, vide which the application under Section 319 Cr.P.C. for summoning the petitioners namely Parveen and Sahil, to face trial in criminal case FIR No.298 dated 27.12.2013 under Sections 406, 420 IPC, Police Station Bhargo Camp, District Jalandhar City, is allowed.

The counsel for the petitioners contended that the petitioners are falsely implicated in the present case at the instance of complainant Ramandeep Kaur wife of Balbir Kumar. That aforesaid Balbir Kumar was real brother of the petitioners and he died on 15.02.2012. The counsel

further contends that after the death of Balbir Kumar, the complainant left her matrimonial home and started living with her parents. The counsel further contended that in order to harass the parents of the petitioners, the complainant lodged afore-stated FIR No.298. The counsel further contended that the said FIR was registered only against three persons Harbans Lal, Vidya wife of Harbans Lal and Roopa daughter of Harbans Lal. The counsel further contended that after investigation the police presented challan against the said three accused persons, who are parents and sister of the petitioners. The counsel for the petitioners further contended that while appearing in the witness box, the complainant tried to rope in the petitioners as accused persons by making false statement. However, the same was accepted by the trial Court while passing impugned order under Section 319 Cr.P.C. The counsel for the petitioners further contended that the power under Section 319 Cr.P.C is discretionary and an extraordinary power which is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. The counsel for the petitioners further contended that such power should be exercised by the Court only where strong and cogent evidence appears against a person during the trial, which is not so in the present case. The counsel for the petitioners further contended that in the instant case the trial Court summoned the petitioners as an additional accused just in a casual manner without application of mind and as such, the impugned order deserves to be set aside.

On the other hand, the State counsel assisted by counsel for the complainant, contended that the trial Court rightly exercised the power provided under Section 319 Cr.P.C on the basis of evidence which was

available on the record. The State counsel further contended that Section 319 Cr.P.C empowers the Court to proceed against other persons who appeared to be guilty of offence though not an accused before the Court. The State counsel further contended that at the time of taking cognizance under Section 319 Cr.P.C. the Court has to see whether a prima facie case is made out to proceed against the accused. The State counsel further contended that in the present case ample evidence is there on the record to establish the complicity of both the petitioners and thus, the trial Court summoned them while exercising its powers under Section 319 Cr.P.C.

I have considered the submissions made by the counsel for the parties.

The brief facts of the case are that Balbir Kumar was son of Harbans Lal and Vidya. Roopa is daughter of Harbans Lal and Vidya. All three of them are already facing trial in the present case. The petitioners are son and daughter of Harbans Lal and Vidya.

As per the allegations in the FIR, complainant Ramandeep Kaur got married with Balbir Kumar son of Harbans Lal and Vidya. Balbir Kumar died on 15.02.2012, as a result of the pistol shot fired by one police official during marriage function in which Balbir Kumar participated being member of the musical group. With regard to the said incident FIR under Section 302 IPC was registered against the culprits. That later on compromise was effected and the police official who killed Balbir Kumar gave compensation of Rs.16 lakhs to the complainant and her children but the same was kept by Harbans Lal and Vidya. That amount of Rs.6 lakhs collected by the members of musical group for the welfare of the complainant and her children was

also kept by both the above said accused. There are also allegations that Harbans Lal, Vidya and Roopa gave assurance to the complainant that they will perform the marriage of the complainant with Sahil son of Harbans Lal. But finally they refused to do so and also refused to handover the aforesaid amount of Rs.16 lakhs and Rs.6 lakhs to the complainant. That finally the complainant was thrown out of her matrimonial home and she is residing in her parental home. The aforesaid FIR was registered against Harbans Lal, Vidya and Roopa.

After completion of investigation, all the aforesaid three persons were challaned by the police and the trial Court framed charges and then the case was fixed for prosecution evidence. The complainant appeared in the witness box as PW2 and while appearing in the witness box she made certain improvements while stating that some of the amount belonging to her was kept by her sister-in-law Parveen and she refused to return the same to her (complainant). She further stated that the accused proposed her marriage with Sahil (petitioner) and in this regard 'Shagun' ceremony was also performed. She further stated that all this was done by the accused persons just to grab compensation of Rs.16 lakhs which was given by the assailants of Balbir Kumar and was meant for her and her children and the other amount collected by different persons for welfare of wife and children of Balbir Kumar. In this way, the complainant deposed in the trial Court to rope in the present petitioners.

On the basis of testimony of the complainant, the prosecution moved an application under Section 319 Cr.P.C. to summon both the petitioners as an additional accused. The same was allowed by the trial Court

vide order dated 10.04.2017, which is under challenge in the present petition.

The law with regard to the powers vested with the trial Court under Section 319 Cr.P.C. has evolved with passage of time. In *Hardeep Singh Vs. State of Punjab (2014) 3 SCC 92*, it was observed that even on the basis of the statement made in the examination-in-chief of the witnesses concerned, the Court can exercise the powers under Section 319 Cr.P.C. to summon the person even named in the examination-in-chief as additional accused and to face the trial. In *Brijendra Singh Vs. State of Rajasthan (2017) 7 SCC 706* the Hon'ble Apex Court observed that when the evidence has been collected by the police during the investigation and having found no evidence against the accused named in the FIR and thus, kept in column No.2 of challan, the same is required to be considered seriously than the deposition of the complainant in his examination-in-chief. Recently the Hon'ble Supreme Court of India in *Manjit Singh Vs. State of Haryana and others 2021 SCC online SC 632* has observed that power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant.

The ratio of the aforesaid decisions lays down that though only a prima facie case is to be established from the evidence led before the Court, in case of Section 319 Cr.P.C. 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 not

rebutted, would lead to conviction and in absence of such satisfaction the Court should not exercise its power under Section 319 Cr.P.C.

Now adverting the facts of the present case, there were no specific allegations against the petitioners in the FIR regarding entrustment of any money to them or with regard to cheating. Even in the statement of complainant Ramandeep Kaur recorded on 4.12.2013 by the police before the registration of the FIR, there were no specific allegations of entrustment of any money by the complainant to the present petitioners. Also there were no allegations in the said statement that petitioner Sahil ever promised to marry the complainant. In these circumstances, the testimony of the complainant in the Court whereby she raised specific allegations of entrustment of particular amount against petitioner Parveen and of cheating against petitioner Sahil appears to be an afterthought and thus, are shrouded by suspicion.

In the light of the above, this Court is of the view that the prosecution has failed to establish that the evidence available on record is more than prima facie to proceed against the present petitioners under Section 319 Cr.P.C. It appears that the trial Court exercised its powers under Section 319 Cr.P.C. just on mere probability of the complicity of the petitioners in the present case. Thus, the impugned order 10.04.2017 passed by the Court of Judicial Magistrate 1st Class, Jalandhar is unsustainable and deserves to be set aside.

Consequently, the present petition is allowed and the impugned order dated 10.04.2017 passed by the learned JMIC, Jalandhar, is hereby set

aside and the application moved by the prosecution under Section 319 Cr.P.C. stands dismissed.

Any observations made in the present order shall not be construed as an expression of opinion on the merits of the trial.

Disposed of accordingly, so also the pending miscellaneous application(s), if any.

02.06.2022
P. Chawla

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No