

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

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CRM-M-34972-2021 (O&M)
DECIDED ON: 10th NOVEMBER, 2022

UDAYPAL SINGH

... PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. J.S. Thind, Advocate
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana.

SANDEEP MOUDGIL, J

CRM-28116-2021

Prayer in this application is for placing on record the final report dated 17.08.2016, as Annexure P-5.

Application is allowed, as prayed for.

Final report under Section 173 Cr.P.C., Annexure P-5, is taken on record, subject to all just exceptions.

CRM-M-34972-2021

The present petition under Section 482 Cr.P.C. has been filed seeking quashing of order dated 16.04.2021 (Annexure P-4) passed by learned Sessions Judge, Sirsa, whereby the revision petition filed by respondent No.2 against the order dated 02.09.2019 (Annexure P-3) passed by learned Judicial Magistrate Ist Class, Ellenabad, has been allowed and the application under Section 319 Cr.P.C for summoning the petitioner as an

additional accused in FIR No. 268, dated 22.07.2016, under Sections 447, 506 and 34 IPC (Section 379 IPC added later on), registered at Police Station Rania, District Sirsa, has been dismissed.

During the pendency of the trial, respondent No.2 moved an application u/s 319 Cr.PC to summon the petitioner Udaypal Singh as an additional accused to face the trial along with his co-accused for the indicated offences.

The trial Court dismissed the application u/s 319 Cr.PC, by virtue of order dated 02.09.2019 (Annexure P-3).

Aggrieved thereby, respondent No.2/complainant filed a revision petition, which has been allowed by learned Sessions Judge, Sirsa vide order dated 16.04.2021 (Annexure P-4). Aggrieved of the order (Annexure P-4), the petitioner who has been summoned as additional accused, has filed the present petition for quashing the summoning order (Annexure P-4).

Brief facts of the case are that the present case was registered at the instance of Sukhdev Singh on the allegations that on 12.04.2016, Jaspal Singh and his sons namely Ajaypal Singh & Udaypal Singh, have harvested his wheat crop standing on his land measuring 2 kanals 7 marlas using Combine Machine and stolen the same. At present, paddy crop is standing on his field. It is alleged that on 13.07.2016, Jaspal Singh alongwith his son Udaypal Singh, has destroyed his paddy crop by using excavator (jindra) behind his tractor and also threatened to kill him, if he entered in the fields, as they wanted to take the possession of his land forcibly. He inherited 1/3 share of land by way of Will executed by their mother, who expired on 22.06.2012 and he is owner in possession of 1/3 share of land comprised in

Rect. No. 15, killa no. 16 (7-8), 17(8-0), 24/1 (3-12) and 8 (2-6-6) for the last four years. He has sown paddy crops on his 1/3 share i.e. 21 kanals 6 marlas 6 Sarsai. Jaspal Singh is cultivating his 2/3 share of land comprised in Rect. No. 15, killa no.3(8-0), 8(5-13-3), 9/1(6-16), 12(8-0), 13(5-0), 19(2-2-2) and Rect. No. 11 killa no.23 (7-2-2) total measuring 42 kanals 13 marlas 3 sarsai. They are cultivating the land for the last four years, as per family settlement. The accused persons want to take the possession of his land forcibly and threatening him for life. He is an old aged person of the age of about 72 years. He prayed for taking legal action against accused persons

Learned counsel for the petitioner submits that from the perusal of FIR, it is evident that the complainant did not admittedly witness the occurrence himself. It is asserted that during investigation, the petitioner and his brother were found innocent and it was also found that no theft of crop had taken place but subsequently, have been summoned to face trial, as additional accused under Section 319 Cr.P.C.

Assertion is that learned trial Court after examining the evidence as well as law laid down by Hon'ble Apex Court in the case of **"Hardeep Singh vs. State of Punjab and others; 2014 (1) RCR (Criminal) 623** came to the conclusion that there was no sufficient grounds for summoning of the additional accused Ajaypal and Udaypal and dismissed the application filed by the complainant under Section 319 Cr.P.C. It is asserted that learned Sessions Judge, Sirsa while allowing the revision petition against the order (Annexure P-3) passed by learned JMIC, Ellenabad, has not only misapplied the provisions of Section 319 Cr.P.C. but has also misread and wrongly appreciated the evidence and documents on record.

The assertion is also that the learned Sessions Judge has passed the order on the basis of conjectures and surmises.

Learned counsel for the respondent-State submits that the order of summoning is well reasoned and prays for dismissal of the present petition.

I have heard the learned counsel for the respective parties at length and have gone through the material available on record with their able assistance.

Section 319 of the Cr.P.C., which is relevant for decision of the case, is reproduced 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 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 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 the provisions of Section 319 Cr.P.C, shows that this power can be exercised by the Court, if the Court is satisfied that any person other than the accused, who has committed an offence is also involved in the offence, can be summoned, if there is strong and cogent evidence than mere possibility. Undisputedly, the power under Section 319 Cr.P.C is discretionary and the same is to be exercised judicially with due care and caution and only when compelling reasons exist for taking cognizance against the person against whom action has not been taken earlier.

A person, whose name is not mentioned in the FIR or a person, whose name is mentioned in the FIR but he has not been chargesheeted or even a person, who has been discharged, can be summoned under Section 319 Cr.P.C provided from the evidence it appears that such person can be tried along with the accused already facing trial.

The scope of extent of powers of Court to summon any person as an accused during course of inquiry or trial in exercise of powers under Section 319 Cr.P.C has been discussed in **Hardeep Singh's** case (supra). The legal position has been summarized in the said judgment in para Nos.98 and 99 and the same is reproduced as under :-

“98. 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. 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 if 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."

In another judgment rendered by Hon'ble the Apex Court in case

Babubhai Bhimabhai Bokhiria and another vs State of Gujarat and others

2014(5) SCC 568, the judgment of ***Hardeep Singh's*** case (supra) has further been highlighted in para No.8, which reads as under :-

"8. Section 319 of the Code confers power on the trial Court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the Investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the code, this Court observed that though the test of prima facie case being made out is same as that when the

cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher.”

The complainant/respondent No.2 has lodged the complaint about two incidents i.e. firstly with respect to theft of wheat crop by Jaspal Singh and his sons Ajaypal and Udaypal on 12.04.2016, and secondly, with regard to destroying the paddy crop on 13.07.2016. In both the incidents, Ajaypal and Udaypal were specifically named by the complainant but no charge sheet was filed by the prosecution in complaint No. 932-PC dated 27.04.2016.

From the bare perusal of the complaint, it is evident that the wheat crop was stolen on 12.04.2016 and paddy crop was destroyed on 13.07.2016. However, the investigating officer for the reasons best known to him introduced one Kashmir Singh as lessee of the complainant, but there is nothing on record to show that Kashmir Singh was lessee of Sukhdev Singh. Moreso, the incident occurred on 12.04.2016 was also stated to be witnessed by Amrik Singh but he was not cited as witness in the list of witnesses.

There is also nothing on record to suggest that why the investigating agency has exonerated Ajaypal and Udaypal during investigation. Moreover, the complainant/respondent No.2 has specifically named Ajaypal Singh and Udaypal Singh alongwith accused Jaspal Singh, who is facing trial for stealing the crop and also trying to take the forcible possession of his land on 13.07.2016. The said fact has also been deposed by the complainant while appearing in the witness box as PW-3. The afore-said fact has been corroborated by PW-2 Harkaran Singh, who, in his

examination-in-chief , has deposed with regard to the involvement of Ajaypal and Udaypal for stealing the crop and destroying the paddy crop.

Keeping in view the above detailed facts and law position as discussed herein above, there is no merit in the instant petition, which fails. Hence, the petition is hereby dismissed.

NOVEMBER 10, 2022
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned : *Yes/No*
Whether reportable : *Yes/No*