

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRM-M-46198-2022 (O & M)****Date of decision:23.12.2022**

Amandeep Kaur

.... Petitioner

V/s

State of Punjab and anr.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Ms. Monita Mehta, Advocate, for the petitioner.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for setting aside the impugned order dated 03.09.2022 passed by the Sessions Judge, Shaheed Bhagat Singh Nagar vide which the order dated 28.01.2022 passed by the Chief Judicial Magistrate, Shaheed Bhagat Singh Nagar summoning the petitioner under Section 319 Cr.P.C. has been upheld in case FIR No.45 dated 12.04.2017 under Sections 406, 420 IPC at Police Station City Nawanshahr, District Shaheed Bhagat Singh Nagar.

2. The brief facts of the case are that FIR No.45 dated 12.04.2017 under Sections 406, 420 IPC, Police Station City Nawanshahr, District Shaheed Bhagat Singh Nagar, came to be registered against Lalit Pawar and Amandeep Kaur (petitioner) wife of Lalit Pawar with the allegations that Lalit Pawar had opened an office at Phillaur to send people abroad. He had promised the petitioner that he would settle his family permanently in Canada for a sum of Rs.25 lacs. For the said purpose, money, passport and education certificates were taken by Lalit Pawar who informed the

complainant that it would take 2-2 ½ years to get a permanent residence Visa. Over a period of time, he alongwith his wife (petitioner) swindled him of Rs.22,50,000/- on different dates. They received the money but did not obtain a permanent residence Visa for him in Canada. On repeated requests for return of the money, a cheque was issued by Lalit Pawar for a sum of Rs.19 lacs dated 30.12.2016. It was also promised that the remaining amount of Rs.3,50,000/- would be refunded in cash. A compromise was arrived at. However, the bank payment was stopped and the cheque was dishonoured. The cash amount of Rs.3,50,000/- was also not given to him (complainant). The petitioner also abused him. Once again, an assurance was given to return the money but the same was not done.

Based on the aforementioned allegations, the FIR was registered and pursuant to the registration, an investigation was conducted in which the petitioner was exonerated and a report under Section 173(2) Cr.P.C. was submitted only against Lalit Pawar. A copy of the report under Section 173(2) Cr.P.C. dated 11.10.2018 is attached herewith as Annexure P-6.

3. Thereafter, during the course of Trial, an application under Section 319 Cr.P.C. was moved on 10.02.2020 (Annexure P-4) to summon the petitioner as an additional accused. The said application was allowed and the petitioner was ordered to be summoned by the Court of Chief Judicial Magistrate vide order dated 28.01.2022. A copy of the said order is attached as Annexure P-1. The aforementioned order was challenged and the revision petition was dismissed by the Court of Sessions Judge, Shaheed Bhagat Singh Nagar vide impugned order dated 03.09.2022. Thereafter, the present petition has been filed.

4. During the course of the hearing, the primary contention raised

statement of the complainant and witnesses recorded in the Court from their statements recorded during the course of the investigation. Therefore, vide order dated 10.10.2022, the learned counsel for the petitioner was directed to place on record the depositions of PW-1/Daljit Singh, PW-2/Kiran and PW-3/Gurmit Singh (complainant) and the same have been placed on record as (Annexures P-7, P-8 and P-9) vide CRM-38778-2022.

5. The matter has come up for hearing today.

6. The learned counsel for the petitioner contends that a perusal of the FIR would reveal that there are no specific allegations against the petitioner. In fact, after a detailed investigation, the petitioner was exonerated. Subsequently, during the course of the Trial, the statements of the prosecution witnesses were recorded wherein they have significantly improved their versions. She contends that the improved version cannot be looked at for the summoning of the petitioner who is otherwise a lady. She, thus, contends that the impugned orders dated 03.09.2022 passed by the Sessions Judge, Shaheed Bhagat Singh Nagar and judgment and order dated 28.01.2022 passed by the Chief Judicial Magistrate, Shaheed Bhagat Singh Nagar are liable to be set aside and the petitioner ought to be discharged.

7. I have heard the learned counsel for the petitioner.

8. Before proceeding further, it would be apposite to refer to the provisions of Section 319 Cr.P.C. The same are reproduced hereinbelow:-

“319 Cr.P.C. -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.”

9. The Hon’ble Supreme Court of India in ‘**Manjeet Singh versus State of Haryana & others, 2021(4) RCR (Criminal) 25**’, held as under:-

“13. The ratio of the aforesaid decisions on the scope and ambit of the powers of the Court under section [319](#) CrPC, 1973 can be summarized as under:

(i) That while exercising the powers under section [319](#) CrPC, 1973 and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;

(ii) for the empowerment of the courts to ensure that the criminal administration of justice works properly;

(iii) the law has been properly codified and modified by the legislature under the CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;

(iv) to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;

- (v) *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;*
- (vi) *section [319](#) CrPC, 1973 allows the court to proceed against any person who is not an accused in a case before it;*
- (vii) *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 times, get away by manipulating the investigating and/or the prosecuting agency;*
- (viii) *section [319](#) CrPC, 1973 is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial;*
- (ix) *the power under section [319](#)(1) CrPC, 1973 can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections [207](#) / [208](#) CrPC, committal, etc. which is only a pretrial stage intended to put the process into motion;*
- (x) *the court can exercise the power under section [319](#) CrPC, 1973 only after the trial proceeds and commences with the recording of the evidence;*
- (xi) *the word "evidence" in section [319](#) CrPC, 1973 means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents;*
- (xii) *it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under section [319](#) CrPC, 1973 is to be exercised and not on the basis of material collected during the investigation;*

(xiii) if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under section [319](#) CrPC, 1973 and can proceed against such other person(s);

(xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under section [319](#) CrPC, 1973 can be exercised;

(xv) that power under section [319](#) CrPC, 1973 can be exercised even at the stage of completion of examination-in-chief and the court need not has to wait till the said evidence is tested on cross-examination;

(xvi) even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of section [319](#) CrPC, 1973 and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses);

(xvii) while exercising the powers under section [319](#) CrPC, 1973 the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial”.

10. Coming back to the facts of the present case, a perusal of the complaint (Annexure P-2) which led to the registration of the FIR would show that the petitioner accompanied her husband and main accused Lalit Pawar on different dates when the amount was paid by the complainant-Gurmit Singh to Lalit Pawar. It has been specifically mentioned in the complaint/FIR that a cheque of Rs.19 lacs was issued and a compromise was

arrived at the instance of both the accused, though, a cheque has been admittedly signed by one of the accused. The petitioner also abused the complainant which also shows prima facie culpability. The depositions of PWs No.1 to 3, namely, Daljit Kaur, Kiran and Gurmit Singh, are categorical as to the role played by the petitioner. In fact, she has held out to the complainant that she was working as a travel agent with her husband-Lalit Pawar. Merely, because no payment had been made in the account of the petitioner or that the cheque was not signed by her, did not, in any manner, detract her from her prima facie culpability at this stage.

11. Keeping in view the aforementioned facts and circumstances, it can be clearly opined at least at this stage that there were reasonable prospects of the conviction of the petitioner in view of the evidence on record, for which she ought to be tried as an additional accused alongwith her husband-Lalit Pawar.

12. In view of the above, I find no merit in the present petition. Therefore, the same is dismissed.

(JASJIT SINGH BEDI)
JUDGE

December 23, 2022
Sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No