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

CRM-M-1-2020

Date of decision : 13.07.2022

Harjinder Kaur

...Petitioner

Versus

Harbans Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Sunny K. Singla, Advocate for the petitioner.

VIKAS BAHL, J. (ORAL)

This is a petition filed under Section 482 of Cr.P.C. for quashing of judgment dated 10.09.2019 (Annexure P-3) passed by the Additional Sessions Judge, Patiala and order dated 10.09.2018 (Annexure P-2) passed by the SDJM, Nabha, whereby the application filed by the present petitioner under Section 319 Cr.P.C. has been wrongly dismissed in Criminal Complaint bearing No.21AT of 18.05.2011 instituted on 18.05.2011 titled as Harjinder Kaur Versus Harbans Singh and others under Sections 452, 457, 380, 427, 347, 352, 365, 506, 120-B, 34 of the Indian Penal Code, 1860 at Police Station Kotwali, Nabha.

The petitioner had filed a complaint against 12 accused persons including respondent Nos.1 to 3 under Sections 452, 457, 380, 427, 347, 352, 365, 506 of IPC and in the said case, the trial Court was

pleased to summon all the 12 accused persons vide order dated 18.03.2014. Respondents who were accused Nos.1, 8 and 9 had filed Criminal Revision against the said order before the Court of Additional Sessions Judge, Patiala and the Additional Sessions Judge, Patiala, vide its judgment dated 29.05.2015 was pleased to allow the said three Criminal Revisions by passing a detailed judgment, after considering the entire facts of the case. Relevant portion of the said judgment is reproduced hereinbelow:-

“xxx xxx

9. This court has heard the learned counsel for both the parties and perused the records of the case carefully with their able assistance.

10. This court is of the considered view that as admitted in para no.2 of the complaint filed by the respondent/complainant against the present revision/petitioners and others, the alleged occurrence has taken place on dated 5.10.2008 whereas admittedly, the present complaint has been filed by the present respondent/complainant Harjinder Kaur on dated 16.5.2011 before the Learned Trial Court i.e. after the delay of more than two years and seven months and the only explanation given by the respondent/complainant in the complaint for causing the aforesaid delay for filing the present complaint is that the present respondent/complainant has approached the concerned police authorities within time and it is the concerned police authorities, who have not registered the criminal complaint against the present revision petitions and other accused persons and that is why, there is a delay of more

than two years and seven months in filing the present complainant. Further more, this court is of the considered view that the Learned Trial Court while passing the impugned order dated 18.3.2014 has not appreciated this aspect of the matter that there is a delay of two years and seven months in filing the present complaint before the Learned Trial Court, which in the considered view of this Court, clearly reveals that the present complaint is an after thought just with a view to falsely implicate the present revision petitioners namely Gul Dhillon, Ravijit Dhillon and Harbans Singh, who are residing beyond the territorial jurisdiction of the Learned Trial Court and just with a view to harass them. Further more, the perusal of the allegations levelled in the complaint filed before the Learned Trial Court by the respondent/complainant clearly reveals that admittedly, there is a property dispute between the present respondent/complainant and the present revision/petitioners and other accused persons with respect to the house in question and further more, it has also been admitted in the complaint by the respondent/complainant that the revision petitioner/accused Harbans Singh has also filed an application No. No.569/C/DSP Nabha dated 17.7.2008 against the father in law namely Amarjit Singh of the respondent/complainant Harjinder Kaur and an FIR no. 110 dated 4.10.2008 under Sections 457,380,506,120B IPC was registered against the aforeaid Amarjit Singh father in law of the present respondent/complainant Harjinder Kaur. Thus, this court is of the considered view that the present complaint filed by the respondent/complainant Harjinder Kaur before the Learned Trial Court is an after thought and counter blast

to the aforesaid FIR No. 110 dated 4.10.2008 under Sections 457,380,506,120B IPC, registered at Police Station Kotwali, Nabha and is being filed just with a view to unnecessarily and illegally harass the present revision petitioners and other accused persons due to aforesaid enmity and the Learned Trial Court while passing the impugned order dated 18.3.2014 has not appreciated this admitted factual aspect of the entire matter and has passed the impugned order dated 18.3.2014 erroneously in a summary manner without appreciating the aforesaid aspect of the entire matter, which is evident from the complaint filed by the respondent/complainant before the Learned Trial Court. Further more, this court is of the considered view that while passing the impugned order dated 18.3.2014 the Learned Tail Court has arrived at a conclusion that at the time of summoning of the accused, the court has to see only the prima facie case and not to go into the merits of the case and as such the present revision/petitioners along with other accused persons have been summoned by it, however, in the considered view of this court, the Learned Trial Court while passing the impugned summoning order dated 18.3.2014 has not specified any specific role allegedly played by the present revision petitioners for the alleged commission of the different offences under Sections 452,457,380,365,506 read with Section 34 of the Indian Penal Code and thus, the impugned order dated 18.3.2014 passed by the Learned Trial Court is non speaking in nature and without giving reasons as to the specific role played by the present revision petitioners in the alleged occurrence dated 5.10.2008 and has only been passed on the basis of vague and general allegations and thus, the impugned order

dated 18.3.2014 is liable to be set aside on merits, in as much as, the same has been passed without considering the respective merits of the present complaint case. Therefore, in view of the reasons advanced as above, the present impugned order dated 18.3.2014 whereby the present revision petitioners have been summoned by the Learned Trial Court is liable to be set aside in view of the reasons advanced on merits as above and, therefore, the impugned order dated 18.3.2014 qua the present petitioners is hereby set aside.”

Additional reasons, inter alia, were also given in the said judgment.

The petitioner had filed three Criminal Revisions before this Court against the abovesaid judgment which were decided by a Coordinate Bench of this Court by passing a common order dated 12.08.2016. Relevant portion of the said order is reproduced hereinbelow:-

“Perusal of the record shows that FIR No.110 dated 04.10.2008, under Sections 457, 380, 506 and 120-B IPC, was registered at Police Station Kotwali, Nabha against the present petitioner (complainant), her husband, father-in-law and brother-in-law in which they were arrested and challan was presented. Learned Additional Sessions Judge, Patiala after discussing the evidence on record held that the alleged occurrence had taken place on 05.10.2008 whereas the present petitioner filed the complaint against the respondents and others on 16.05.2011 before learned trial Court i.e. after the delay of more than two years and seven months. Learned

Additional Sessions Judge, Patiala has held that such a long delay has not been explained by the present petitioners. It has been further held that the complaint filed by the present petitioner before learned trial Court is an afterthought and counter-blast to FIR No.110 dated 04.10.2008, under Sections 457, 380, 506 and 120-B IPC, registered at Police Station Kotwali, Nabha and was filed just to unnecessarily harass the respondents. Learned Additional Sessions Judge, Patiala has also held that learned trial Court while summoning the respondents herein had not appreciated this admitted factual aspect of the entire matter. It has also been held that learned trial Court while passing the order dated 18.03.2014 has not specified any specific role allegedly played by the present respondents for the alleged commission of the different offences. Learned Additional Sessions Judge, Patiala has held that the order dated 18.03.2014, summoning the present respondents, has been passed only on the basis of vague and general allegations and, therefore, the same is liable to be set side.

I have gone through the impugned order passed by learned Additional Sessions Judge, Patiala, which is correct, as per evidence and law. At the time of arguments, nothing has been pointed out as to how the findings given by learned Additional Sessions Judge, Patiala are perverse or against the evidence. Nothing has been pointed out as to what illegality has been committed by learned Additional Sessions Judge, Patiala.

Keeping in view the above discussion, I find that the impugned order dated 29.05.2015 passed by learned Additional Sessions Judge, Patiala is correct, as per law and evidence and does not require any interference from

this Court.

Therefore, finding no merit in these revision petitions, the same are dismissed.

12.08.2016

Sd/- (INDERJIT SINGH)

JUDGE”

A perusal of the above reproduced two orders would show that the summoning order had been passed after taking into consideration the entire evidence. It was observed that the occurrence in question had taken place in the month of October, 2008 whereas, the complaint had been filed by the petitioner against the respondents on 17.05.2011 i.e., after a delay of more than 2 years and 7 months and the said delay has not been explained by the petitioner and prima facie, it appeared that the complaint was an afterthought and a counter blast to FIR No.110 dated 04.10.2008 and the same was filed only to harass the respondents. It was further observed in the order dated 18.03.2014, that no specific role has been specified to the present respondents. It has not been disputed that the said order had attained finality and has not been challenged further. The petitioner, after stepping into the witness box as CW3, had moved an application under Section 319 Cr.P.C. to summon the present respondents against whom the summoning order had been set aside and upheld by this Court. An application under Section 319 Cr.P.C. was sought to be supported by the statement of the complainant which was similar to the statements which had been given earlier in the complaint as well as in the pre-summoning evidence, and were not found to be in her favour in the earlier round of litigation.

Learned counsel for the petitioner has not been able to point out any additional evidence/material so as to proceed against the present respondents by impleading them as additional accused. The Sub Divisional Judicial Magistrate, had dismissed the said application under Section 319 Cr.P.C. after observing that no new fact had come up after summoning the evidence and even, the evidence of complainant as CW3 is the reiteration of the earlier pleas. The learned Judge had also considered the judgments of various Courts on the aspect of summoning persons as additional accused under Section 319 Cr.P.C. and came to the conclusion that once summoning order had been set aside by the Revisional Court and upheld by the High Court in the earlier round of litigation then, on the basis of the same set of allegations, application under Section 319 Cr.P.C. would not lie. While considering an application under Section 319 Cr.P.C., the satisfaction required is of a higher degree than the satisfaction required for summoning an accused at the first stage and the said satisfaction would be the same as for framing a charge. The petitioner had filed a revision before the Additional Sessions Judge, Patiala which was also dismissed vide order dated 10.09.2019 and while dismissing the said revision petition, it was observed that since, after summoning order had been set aside, no further material had come on record thus, application under Section 319 Cr.P.C. was liable to be dismissed.

This Court has gone through the orders passed by both the Courts below and is of the opinion that there is no illegality, infirmity or perversity in the same. The sole argument sought to be raised by the

petitioner is that as per the settled law, application under Section 319 Cr.P.C. can be moved even in a complaint case. It would be relevant to point out that the basis of rejection by both the Courts below of the application under Section 319 Cr.P.C. is the fact that after summoning order had been set aside and had been upheld by this Court, there was no new material thereafter, and even evidence of CW3-complainant was only the reiteration of the allegations which had been levelled in the complaint and in the pre-summoning evidence, thus, application under Section 319 Cr.P.C. was dismissed and the same was not dismissed on the ground that such application under Section 319 Cr.P.C. is not maintainable in a complaint case.

No other point has been raised by the learned counsel for the petitioner.

Keeping in view the abovesaid facts and circumstances, the present petition is dismissed.

All the pending miscellaneous applications, if any, stand disposed of in view of the abovesaid judgment.

13.07.2022*Pawan***(VIKAS BAHL)
JUDGE****Whether speaking/reasoned:- Yes/No****Whether reportable:- Yes/No**