IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.1097 of 2023 (O&M)

Reserved on : 16th May, 2023
Date of pronouncement : 24th May, 2023

Yatinder Kumar Dhall

… Petitioner

Versus

Union Territory Chandigarh & others

… Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. S.P. Arora and Mr. Himmat S. Sidhu, Advocates for the petitioner.

Mr. A.M. Punchhi, PP, UT Chandigarh for respondent No.1.

Mr. Viren Sibal, Advocate for respondents No.2 and 3.

MANJARI NEHRU KAUL, J.

1. The petitioner is seeking setting aside of the order dated 15.05.2017 (Annexure P-4) passed by learned Judicial Magistrate 1st Class, Chandigarh, along with order dated 18.12.2022 (Annexure P-5), passed by learned Additional Sessions Judge, Chandigarh, in case bearing FIR No.64 dated 22.02.2006 under Sections 420, 465, 467, 468, 471, 385 IPC registered at Police Station Sector 34, Chandigarh, vide which the petitioner was ordered to be summoned as an additional accused under Section 319 Cr.P.C.

2. Before proceeding further, it would be relevant to refer to the allegations levelled in the FIR in question (annexed as Annexure

P-1), which was registered at the instance of respondent No.2 Kamla Asht.

3. Respondent No.2 Kamla Asht (since deceased) received a sum of ₹ 2,73,000/- in the year 1992 as compensation in an Award passed by the learned Motor Accident Claims Tribunal (hereinafter referred to as, 'MACT'), on account of the death of her husband in a motor vehicular accident. Besides the aforesaid compensation, respondent No.2 was also in receipt of retiral benefits of her deceased husband along with insurance claims etc. Her nephew, Vinay Krishan Asht (hereinafter referred to as, 'nephew') was serving in New Bank of India, Sector 22, Chandigarh. He persuaded and prevailed upon the complainant to deposit the compensation received from the MACT along with other retiral benefits etc. of her deceased husband, in the branch of the bank, where he was posted, by assuring her that she would not face any difficulty while withdrawing her money, as and when she required the same. Subsequently, her nephew told the complainant that one of his friends Yatinder Kumar Dhall (hereinafter referred to as, 'the petitioner') son of Hans Raj Dhall, was keen to sell House No.3519, Sector 46-C, Chandigarh, which had been allotted in the name of his father by the Chandigarh Housing Board, since he had been transferred to New Delhi. The complainant, on being persuaded, agreed to purchase the said house and paid money for its purchase to her nephew, on the latter's assurance that he would get the house transferred in her name and also provide her with all the relevant documents. The signatures of the complainant as well as that of her son

were obtained on numerous blank papers by her nephew on the pretext that they would be required for the transfer of the house in her name. Thereafter, her nephew fraudulently misappropriated certain fixed deposits, which were lying deposited in the name of the complainant, by misusing her blank signed papers. After sometime, nephew of the complainant was transferred to Delhi. However, on account of his fraudulent activities, the nephew of the complainant was removed from the services of the Bank, which fact was concealed by him, from the complainant. Instead, she was told by her nephew, that he would be starting some business in Delhi. After some days, nephew of the complainant came to her with a sob story that he had incurred losses in his business and had no place to reside. Keeping in view his 'bad financial condition' and also his close relationship with the complainant, he was permitted to live in the house in question on the ground floor. However, whenever the complainant demanded the relevant documents qua the ownership of the house in question from her nephew, he put off the matter by saying that Hans Raj Dhall, father of the petitioner, was unwell and as such he was unable to visit Chandigarh to get the sale deed executed with respect to the house in question. An assurance was given to the complainant that as and when Hans Raj Dhall would visit Chandigarh, the necessary documentation and formalities would be completed. The complainant visited Delhi to meet Hans Raj Dhall, however, both he and his son, i.e. the petitioner refused to meet her and instead told her that they did not want to talk to her in the absence of her nephew. The complainant alleged that a fraud had been played upon her by all three of them, i.e. her nephew, petitioner and his father Hans Raj Dhall. The prices of the properties in Chandigarh had escalated and hence, all the above three persons were not only extending threats to her but also demanding more money at the prevailing market price. Subsequently, her nephew got a document prepared fraudulently in connivance with Hans Raj Dhall, wherein the complainant and her nephew were shown to be equal shareholders in the house in question. Furthermore, in the said document, it was falsely shown that only part payment of sale consideration had been made by the complainant. Complainant thus, alleged that not only had the entire sale consideration price been taken away from her by her nephew and in turn given to Hans Raj Dhall, but by misusing the blank signed papers, her nephew had shown himself to be 50% owner of the house in question. Resultantly, wrongful losses had been caused to her by all the above three persons. The complainant further alleged that her nephew as well as Hans Raj Dhall were bent upon dispossessing her from the house in question, by exerting pressure and by extending threats of dire consequences, in case their illegal demands were not met.

4. Subsequent to the registration of the FIR in question, during investigation, the police placed Hans Raj Dhall and the petitioner in Column No.2 and presented challan only against the nephew of the complainant, accused Vinay Krishan Asht. After the challan was presented, an application under Section 319 Cr.P.C. was moved by the complainant to summon Hans Raj Dhall and the petitioner as additional accused to face trial along with her nephew.

The said application was partly allowed by the trial Court vide order dated 06.02.2022 wherein only Hans Raj Dhall was ordered to be summoned to face trial. Aggrieved on account of non-summoning of the petitioner, complainant approached the learned Additional Sessions Judge, Chandigarh by preferring a revision petition, which however, was dismissed. Thereafter, during the course of trial, another application under Section 319 Cr.P.C. for summoning the petitioner was moved by the complainant which was dismissed by the trial Court vide order dated 01.08.2016. The aforesaid order of dismissal of the application under Section 319 Cr.P.C. was then impugned by way of a revision. The Revisional Court, while making certain observations vide order dated 19.04.2017, allowed the revision petition and remanded the matter back to the trial Court to decide the application afresh under Section 319 Cr.P.C., by taking into consideration all the relevant material on record. The learned trial Court, taking into consideration the findings of the revisional Court, vide impugned order dated 15.05.2017 summoned the petitioner as an additional accused to face trial. A revision was then preferred against the aforementioned order by the petitioner which was dismissed vide order dated 18.12.2022 on the ground that the revisional Court had already given its view vide order dated 19.04.2017 and revision petition concerning the same application was thus, not maintainable.

5. Learned counsel for the petitioner has inter alia challenged the impugned order on the following grounds:

(i) That the Courts below, while passing the impugned orders, had failed to appreciate that the complainant had been repeatedly attempting to falsely implicate the petitioner in the present case;

(ii) That the application under Section 319 Cr.P.C. had been moved at a highly belated stage when the trial was nearing conclusion. It was thus, evident that it had been moved just to harass the petitioner as his father Hans Raj Dhall had passed away and the summoning of the petitioner at such a belated stage, would cause grave prejudice to him as a denovo trial would commence.

(iii) That in order to summon any person as an additional accused, the test to be applied is one of more than a mere prima-facie case, than the one exercised at the time of the framing of charges. However, in the present case, it was on the basis of some audio conversations between the son of the complainant and the accused including the petitioner, that he was being now sought to be summoned as an additional accused.

(iv) That no cogent evidence had come forth against the petitioner, warranting his summoning, other than the bald allegations levelled by respondent No.2. Moreover, the petitioner had been declared innocent during investigation by police, therefore the trial Court had gravely erred in allowing the application under Section 319 Cr.P.C.

(v) That the complainant had also moved an application under Section 156(3) Cr.P.C. seeking further investigation as both the petitioner and his father Hans Raj Dhall had been declared innocent. The said application was dismissed upto the High Court.

(vi) That it was amply clear from a perusal of the agreement to sell (Annexure P-2) that it had been executed between father of the petitioner and accused i.e. nephew of the complainant and still further, the petitioner was merely a witness to the same. Therefore, the petitioner could not be said to have been an active participant in the crime in question, more so when he was neither a party to the agreement to sell nor a beneficiary of the said transaction.

(vii) That no specific accusation had been levelled against the petitioner by the complainant qua having handed over any money out of the alleged sale consideration to him. Merely because on a couple of occasions, the son of the complainant had interacted and talked to the petitioner, would not make him culpable of the offences in question.

(viii) That learned Additional Sessions Judge, Chandigarh vide order dated 19.04.2017 in Criminal Revision No.172 of 10.08.2016, remanded the matter back to the trial Court to decide it afresh, but made some observations against the petitioner, which left the trial Court with no other option but to allow the application under Section 319 Cr.P.C.

6. Per contra, learned counsel appearing for the UT of Chandigarh assisted by learned counsel for the complainant, while controverting the submissions made by the counsel opposite, prayed for the dismissal of the instant petition on the following grounds:

(i) That no doubt vide order dated 11.01.2016, this Court in CRM-M No.7814 of 2015 (Annexure P-3) had declined the prayer of the complainant, however, the prayer made therein for further investigation under Section 156(3) Cr.P.C., could not in any manner be linked to the application, which had been moved under Section 319 Cr.P.C. to summon the petitioner as an additional accused.

(ii) That the testimony of all the prosecution witnesses including respondent No.2 and her sons explicitly pointed towards the complicity of the petitioner as he in collusion with his father Hans Raj Dhall and accused Vinay Krishan Asht had played a huge fraud upon the complainant by making her part with a huge sum of money by giving her false promise of conveying the title of the house in her favour. Further, to defeat her rights and to cause undue loss to the complainant, later on, the petitioner along with the other accused had fabricated an agreement to sell. Hence, the malafides on the part of all the accused including the petitioner to cheat the complainant were writ large.

(iii) That the petitioner had been summoned on the basis of a detailed order passed by the learned Additional Sessions

Judge and the very fact that a forged agreement to sell bore the signatures of the petitioner, by itself was sufficient and good enough ground to summon him as an additional accused. Besides this, there were recorded conversations between the son of the complainant and the petitioner, wherein the petitioner could be heard demanding more money to get the sale deed in question executed. In support, learned counsel has placed reliance on the report of the FSL (Ex.PW12/A) regarding the voice samples sent to it, which substantiated the version of the complainant qua the petitioner and the accused demanding more money from the sons of the complainant.

(iv) That a bare perusal of the purported agreement to sell (Annexure R-4) clearly indicated that it was a forged and fabricated document as the stamp paper, on which the said agreement had been reduced into writing, was purchased on 01.08.1992 whereas, the purported agreement to sell was entered prior thereto, on 25.07.1992.

Learned counsel, thus asserted that there was sufficient material which reflected more than prima facie involvement of the petitioner in the crime in question.

7. I have heard learned counsel for the parties and perused the entire material on record.

8. Before proceeding further, it would be relevant to reproduce the provisions of Section 319 Cr.P.C., which read 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.*
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> *(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 or, 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 reheard;*
>
> *(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. Thus, what flows from a minute reading of the provisions of Section 319 Cr.P.C. is that it comes into play only when the trial of an offence is underway. If at the time of recording of evidence during trial, some material appears against a person other than the accused, who already stands challaned by the investigating agency, the powers under Section 319 Cr.P.C. can certainly be invoked by the Court to

summon such person as an additional accused, because the object behind Section 319 Cr.P.C. is to ensure that no one, who appears guilty, escapes trial in relation to that guilt.

10. In this regard, it would be apposite to refer to the ratio of law laid down by the Hon'ble Supreme Court in **'Hardeep Singh v. State of Punjab' 2014(3) SCC 92,** wherein it was 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 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."

11. Adverting to the case in hand, this Court thus, in light of the ratio of law settled in **Hardeep Singh's case (supra),** does not find any force in the submissions made by the learned counsel for the petitioner for the reasons to follow:

(i) The deposition of PW-2 complainant Kamla Asht coupled with the deposition of her sons reveals that specific allegations have been levelled against the petitioner of having colluded with his father Hans Raj Dhall and nephew of the complainant to cheat, defraud and cause undue loss to the complainant. The complainant has given an explicit and vivid account of the mode and manner in which she was made to part with a huge sum of money on an assurance given and on the false pretext that the title of the house in question would be transferred in her name. In order to substantiate its case, the prosecution relied upon the FSL report, Ex.PW-12/8, which are recorded conversations between the petitioner and son of the complainant. Furthermore and most importantly, the stamp paper, on which the agreement to sell Ex.P1 was executed, was purchased on 01.09.1992, however, strangely, the agreement to sell was entered prior thereto, on 25.07.1992. This circumstance, prima facie goes a long way to point towards the complicity of the petitioner in the crime in question, more so, when it is the admitted case of the petitioner himself that he was a witness to the said agreement to sell. Therefore, when the allegations are that the agreement to sell itself was fabricated to cheat the complainant, it would be for the petitioner to explain as to under what circumstances the agreement to sell was entered into, which was admittedly attested by him. Needless to add, the petitioner shall get ample opportunity to prove his innocence during trial.

(ii) Merely because the investigating agency did not challan the petitioner subsequent to the registration of the FIR in question, would not be a sufficient ground to not summon him under Section 319 Cr.P.C., as it would defeat the very purpose for which Section 319 Cr.P.C. was enacted. In **Hardeep Singh's case (supra),** the Hon'ble Supreme Court while discussing the scope of Section 319 Cr.P.C., has categorically held that even if a person has been declared innocent by the police during investigation, he can still be summoned under Section 319 Cr.P.C.

(iii) The Court cannot be expected to be a mute spectator, if during the course of trial, even at a belated stage, some material hinting towards more than prima facie involvement of a person, who is sought to be summoned, comes to light. Reference may be made to the decision of the Hon'ble Supreme Court in **'Sukhpal Singh Khaira vs. State of Punjab' 2022 LiveLaw (SC) 1009,** wherein it has been held that application under Section 319 Cr.P.C. could be moved at any stage before the order of sentence was passed in a case of conviction of an accused or before the judgment of acquittal was pronounced.

12. On a perusal of the impugned order and other material on record, this Court is thus satisfied that there exists sufficient material to warrant the summoning of the petitioner under Section 319 Cr.P.C. to face trial, along with the other accused, who are already facing trial. This Court, therefore, does not find any infirmity much less illegality in the impugned order, vide which the petitioner has been summoned to face trial under Section 319 Cr.P.C.

13. The petition, as such, stands dismissed. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

14. Before parting, this Court is constrained to observe and also deprecates the conduct of the Revisional Court in remanding the matter back to the trial Court vide order dated 19.04.2017. When the Revisional Court below had summoned the entire records from the trial Court, it was fully competent to pass an appropriate order in case it was satisfied that a case for summoning the petitioner under Section 319 Cr.P.C. was made out. The Revisional Court should not have thus shirked its duty by unnecessarily remanding the matter back for fresh consideration of the application under Section 319 Cr.P.C. as it has

without doubt, delayed the conclusion of the trial and resulted in wastage of precious time of the Courts.

(MANJARI NEHRU KAUL)
JUDGE

May 24, 2023
rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No