

CRM-M-1386-2020

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

202

CRM-M-1386-2020

Date of decision: 21.11.2023

VED PARKASH AND ANOTHER

...Petitioners

Versus

STATE OF HARYANA AND ANOTHER

...Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Manish Soni, Advocate,
for the petitioners.

Mr. Viney Phogat, DAG, Haryana.

Mr. Gurmohan Singh Bedi, Advocate,
for respondent No.2.

RAJBIR SEHRAWAT, J. (Oral)

1. The present petition has been filed under Section 482 Cr.P.C., for setting aside the order dated 21.12.2019 (Annexure P-9) passed by the Additional Sessions Judge, Gurugram, whereby revision filed by respondent-complainant has been allowed, and thereby, the order dated 30.01.2019 (Annexure P8) passed by the Judicial Magistrate Ist Class, Gurugram; dismissing the application filed by respondent No.2-complainant under Section 319 Cr.P.C. for summoning the petitioners as additional accused in FIR No.601 dated 21.09.2017, registered under Sections 406, 420, 506 and 120-B IPC, at Police Station Badshahpur, Gurugram, has been set aside, and the trial Court has been directed to decide the application afresh while keeping in view the observations of the revisional Court.

CRM-M-1386-2020

2. The facts, as available, on the file are that respondent No.2-complainant had lodged a complaint with the police alleging therein that Mukesh @ Mukesh Kumar, Kapil and the present petitioners (Ved Parkash and Dharampal), under a conspiracy, had made him to part with an amount of Rs.40 lakh. The said amount was received by co-accused, namely, Mukesh @ Mukesh Kumar and Kapil by assuring that they will execute the agreement to sell qua 2 acres of land in his favour. At the time, when co-accused, had made this promise, even the present petitioners had accompanied them to the house of the complainant to reassure him that he should pay the money and the land will be transferred in his favour. However, subsequently, after getting money from the complainant, co-accused, namely, Mukesh @ Mukesh Kumar had even refused to enter into any agreement to sell with the complainant. Rather, co-accused, namely, Mukesh @ Mukesh Kumar transferred the same land which was promised to be sold to the complainant, in favour of the present petitioners. With these allegations, the complainant had lodged the above-said FIR.

3. After investigation, the police had filed the challan against co-accused, namely, Mukesh @ Mukesh Kumar and Kapil.

4. After examination of the complainant, the complainant had filed an application under Section 319 Cr.P.C. for summoning of the petitioners as additional accused. The said application was dismissed by the trial Court, vide order dated 30.01.2019. Thereafter, respondent No.2-complainant filed a revision against the order dated 30.01.2019. The said revision has been allowed vide impugned order dated 21.12.2019, and the order passed by the trial Court has been set aside; with a further direction to

CRM-M-1386-2020

the trial Court to decide the application under Section 319 Cr.P.C. afresh after applying its mind to the facts and circumstances mentioned in the said order. Challenging the said order dated 21.12.2019, the present revision has been filed by the petitioners.

5. While arguing the case, counsel for the petitioners has submitted that the order passed by the Additional Sessions Judge, is wrong, *per se*, because that court could not have directed the trial Court to reconsider the matter keeping in view the observations made by the revisional Court. Being a revisional Court, it could have directed only a further inquiry into the matter and then to pass a fresh order. The order passed by the revisional Court is based on conjectures and surmises. No specific evidence has been referred to by the revisional Court in the impugned order to arrive at the conclusion. It is not even the allegation against the petitioners that they are the beneficiaries of any money paid by the complainant. The matter was purely between the complainant and the other co-accused to whom the money was transferred. Not only that, co-accused, namely, Mukesh Kumar is even facing the proceedings under Section 138 of the N.I.Act, on account of cheque given by him having been defaulted. The very fact that the cheque was issued by the co-accused, shows that it was his responsibility and liability; which he was to discharge; on account of having received money from the complainant. Hence, the petitioners are not involved in the matter, by any means. It is further submitted that on the date, when the money was received by the co-accused, there was no land standing in the name of co-accused, namely, Mukesh Kumar. The land was inherited by the co-accused only

CRM-M-1386-2020

subsequently; when father of the petitioners and co-accused Mukesh Kumar had expired.

6. Learned counsel for the petitioners has further submitted that mere *ipsi dixi* of the statement made by the complainant before the Court, cannot be made a ground for passing an order of summoning a person as additional accused to face the trial. In support of his contentions, learned counsel has relied upon the judgment rendered by the Hon'ble Supreme Court in '**Brijendra Singh and others Vs. State of Rajasthan, 2017(3) R.C.R. (Criminal) 374.** Counsel for the petitioners has further submitted that there has to be some more evidence and corroboration of the allegations from the side of the complainant. The test for summoning a person as additional accused has to be a criteria, which is higher than framing of charge against the other co-accused. Learned counsel has relied upon the judgments rendered by the Hon'ble Supreme Court in Court in **Hardeep Singh Vs. State of Punjab and others, 2014(1) R.C.R. (Criminal) 623, Dev Wati and Ors. Vs. State of Haryana and another 2019(5) R.C.R. (Criminal) 464, Periyasami and Ors. Vs. S. Nallasamy 2019(2) R.C.R. (Criminal) 556 and Sagar Vs. State of U.P. and another 2022 AIR (Supreme Court) 1420.** Since the criteria laid down by the Hon'ble Supreme Court for summoning a person as additional accused, is not satisfied in the present case, therefore, the trial Court had rightly dismissed the application filed by the complainant under Section 319 Cr.P.C. The revisional Court has gone totally wrong in law in reversing the said well-reasoned order passed by the trial Court.

7. On the other hand, counsel for the State and counsel for the

CRM-M-1386-2020

complainant have submitted that, right from the beginning, this is the allegation of the complainant that the present petitioners alongwith co-accused, who are none other than their real brother and nephew, had visited the house of the complainant to assure him that the land will be transferred in his favour, if he pays the requisite money. On that assurance only, the complainant had parted with the amount of Rs.40 lakh through bank transactions. The payment of money is not even disputed by the co-accused or by the petitioners. However, since all the accused were acting in a conspiracy, therefore, after getting the money, the co-accused Mukesh had transferred his entire share in favour of the present petitioners; just to deprive the complainant of the land in lieu of the money which was already taken by all the accused. The said aspect was not appreciated either by the Investigating Agency or by the trial Court. While appearing as a witness before the trial Court, the complainant has duly deposed that the present petitioners were also in conspiracy with the other co-accused and under that conspiracy only, the present petitioners had accompanied their brother to assure the complainant qua the transfer of the land which all of them were to inherit. The petitioners are the beneficiaries of the transfer of land in their favour, although the same was promised to be sold to the complainant at the time of taking money from the complainant. Due to that transfer even the agreement to sell, could not be entered into between the parties. In fact, no money is alleged to have been paid by the petitioners to their brother for getting transferred his share in their favour, which shows that transfer of land in favour of the present petitioners is nothing, but a part of the conspiracy in which all the accused have participated. All these

CRM-M-1386-2020

facts have been duly brought on record by the complainant. Hence, the revisional Court has rightly appreciated the material on record. As a revisional Court, instead of passing the order of summoning of the petitioners as the additional accused, the revisional court has only done something very right by remitting the matter back to the trial Court to apply its independent mind qua the application moved by the complainant. No fault can be found with such an order passed by the revisional Court. Hence, the present petition deserves to be dismissed. Learned counsel for the complainant-respondent No.2 has relied upon the judgment rendered by the Hon'ble Supreme Court in 'Sartaj Singh Vs. State of Haryana and another. etc., 2021(2) R.C.R.(Criminal) 527, to buttress his arguments that mere statement made by the complainant on oath while appearing as a witness before the trial Court, can be sufficient to summon a person as additional accused.

8. Having heard the counsel for the parties, this Court is of the view that it would not be appropriate for this Court, at this stage, to make much comments upon the merits of the case, lest the case of the either side should be adversely affected. However, suffice it to say that perusal of the order passed by the trial Court does show that it had missed certain aspects available on the file, while dismissing the application under Section 319 Cr.P.C. moved by the complainant. The said aspect has only been brought out by the lower revisional Court and thus, the order passed by the trial Court has rightly been set aside and the matter has been remitted to the trial Court for re-consideration. This Court does not find any ground to interfere with the order passed by the court below.

CRM-M-1386-2020

9. Although counsel for the petitioner has vehemently argued regarding the criteria to be applied to come to the conclusion as to whether a person deserves to be summoned as an additional accused while exercising the powers under Section 319 Cr.P.C. or not, however, that argument, *per se*, does not arise in the present case. It is not a case where revisional Court has reversed the order passed by the trial Court and has passed the order summoning the petitioners as the additional accused. The revisional Court has only set aside the order passed by the trial Court, even that, by pointing out certain facts and circumstances which should have been considered by the trial Court while rejecting the application moved by the complainant. It would be for the trial Court now to apply the criteria laid down by the Hon'ble Supreme in the case of *Hardeep Singh's case (supra)*, and other cases; for coming to the conclusion as to whether the petitioners deserve to be summoned as additional accused or not. This Court is not required to express any opinion in that regard, at this stage.

10. Although the counsel for the petitioner has also argued that the revisional Court has gone wrong in law in directing the trial Court to reconsider the case and to decide the same afresh in view of the observations made by the revisional Court, however, even this argument is not germane for the disposal of the present petition. Needless to say that the revisional Court has only pointed out certain materials, facts and circumstances which the trial Court would now be required to consider; while deciding afresh the application moved by the complainant. The revisional Court has not imposed its opinion upon the trial Court.

11. However, to clarify the above aspect, it is ordered that though

CRM-M-1386-2020

the trial Court would be required to take into consideration the facts and circumstances pointed out by the revisional Court, however, it would be free to take an independent decision, in accordance with law, without getting influenced by any impression created by the order passed by the revisional court.

11. In view of the above, the present petition is dismissed.

21.11.2023

parveen kumar

**(RAJBIR SEHRAWAT)
JUDGE**

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No