

**109 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRM-M-5101-2023
DECIDED ON: 10.03.2023****DIMPLE****.....PETITIONER****VERSUS****STATE OF PUNJAB****.....RESPONDENT****CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.**

Present: Mr. Balwant Singh, Advocate
for the petitioner.

Mr. Rajeev Verma, DAG, Punjab.

SANDEEP MOUDGIL, J (ORAL)

The petitioner has assailed the order dated 06.05.2022 (Annexure P-3) passed by Additional Chief Judicial Magistrate, Ludhiana as well as order dated 19.11.2022 (Annexure P-4) passed by Additional Sessions Judge, Ludhiana by invoking jurisdiction of this Court under Section 482 Criminal Procedure Code, 1973. The petitioner is aggrieved against the aforesaid orders whereby he has been summoned as an additional accused to face trial under Sections 177, 199, 200, 420 IPC, in FIR No.150 dated 05.04.2021, registered at Police Station Division No.5, Ludhiana and the revision petition stands dismissed upholding the order dated 19.11.2022.

Mr. Balwant Singh, learned counsel for the petitioner states that the case was registered alleging that one Pushpa Rani had connived with the petitioner and got furnished false information before the Court with regard to bail bonds and surety bonds to seek release of petitioner namely Dimple. It is in that regard, the present FIR was got registered and after investigation, challan was presented against Pushpa Rani only by the Investigating Agency. He has also submitted that the charges were framed and during the prosecution evidence an application under Section 319 Cr.P.C. was moved to summon the

petitioner as an additional accused with the averments that the complainant- Rajbir Kaur, Judicial Magistrate First Class, Ludhiana, deposed in categorical term that Dimple and Amit had also connived with Pushpa Rani while in furnishing false affidavit and furnished false information to secure the release of the petitioner.

It has been argued on behalf of the petitioner that the allegation as stated hereinabove are totally false as there was neither any connivance nor any conspiracy between the petitioner and Pushpa Rani at the time of furnishing surety bonds on 16.02.2016 before the trial Court and, therefore, the impugned orders dated 06.05.2022 (Annexure P-3) and 19.11.2022 (Annexure P-4) have been passed on assumptions and presumptions wherein distorted and shuffled facts have been presented by the prosecution. Learned counsel for the petitioner has also vehemently contended that under Section 401 (2) of the Criminal Procedure Code, Revisional Court could not have passed the order without giving the petitioner an opportunity of being heard but the same has not been adhered to by the Revisional Court below while passing the order dated 19.11.2022 (Annexure P-4). Finally, the prayer to accept the instant petition has been made laying stress on the ground that the impugned order dated 19.11.2022 (Annexure P-4) is pre-judice to the interest of the petitioner apart from the fact that, she has not been named in the FIR and even Pushpa Rani did not uttered any overt act against the petitioner and, therefore, the Courts below have committed grave error in law.

Having heard learned counsel for the petitioner, this court has examined the impugned order dated 06.05.2022 passed by Additional Chief Judicial Magistrate, Ludhiana wherein it revealed that the case has been registered on the basis of a complaint made by Ms. Rajbir Kaur, Judicial Magistrate First Class, Ludhiana dated 01.04.2021 wherein it was stated that

Pushpa Rani furnished surety for co-accused Dimple-petitioner in case '*State V. Dimple*', FIR No.96 of 2015 under Section 420 registered at Police Station Sanhewal, Ludhiana, on 16.02.2016. It is also evident that she again furnished surety bond for accused Amit Sharma in case CRM-M-35317-2013 titled as '*Jatinder V. Sonia and others*' on 25.08.2017 against same property and furnished an affidavit that she has never stood surety against this property before any Court till date. It is thereafter the registration of the case, investigation was conducted by the police and submitted the challan against Pushpa Rani only but during the prosecution evidence-PW 3 Ms. Rajbir Kaur, Judicial Magistrate First Class, Ludhiana deposed with regard to the above discussed allegations as made in the complaint. In fact another aspect to be borne in mind is that while summoning the petitioner as an additional accused it was also considered by the Court below that these two accused Dimple and Amit were left out inadvertently as they were not declared innocent as well while filing of the challan by the prosecution.

The power under Section 319 Cr.P.C. is discretionary power of the trial Court, therefore, the discretion exercised by the trial Court cannot be lightly interfered with, unless it is shown that the order refusing to implead the persons as accused has been made mechanically or it is arbitrary or perverse. The trial Court, while refusing to take cognizance against the accused, is bound to take into account every aspect of the matter and the entire material placed before it and more particularly their chances of conviction of those persons who have been sought to be summoned as accused.

The issue relating to the power to be exercised under Section 319 of Cr.P.C. came up for consideration before a Constitutional Bench of the Hon'ble Supreme Court in *Hardeep Singh vs. State of Punjab (2014) 3 SCC 92* wherein the scope, procedure and at what stage, such power can be exercised

was considered in detail. It was held that Section 319 Cr.P.C springs out of the doctrine *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr.P.C. It further held that it is the duty of the Court to do justice by punishing the real culprit. 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. The question remains under what circumstances and at what stage should the Court exercise its power as contemplated in Section 319 CrPC? The Constitutional Bench, while concurring with the views taken in **Dharam Pal Vs. State of Haryana reported in (2014) 3 SCC 306**, held that:-

“A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under Section 319 Code of Criminal Procedure provided from the evidence, it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned, the requirement of Sections 300 and 398 Code of Criminal Procedure has to be complied with before he can be summoned afresh.”

The Hon’ble Supreme Court further held that :-

“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 un rebutted, would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power Under Section 319 Code of Criminal Procedure in Section 319 Code of Criminal Procedure 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 Code of Criminal Procedure to form any opinion as to the guilt of the accused."

(emphasis applied)

In **Babubhai Bhimabhai Bokhiria & Another Vs. State of Gujarat & Others., AIR 2014 SC 2228**, the Hon'ble Supreme Court held that a person can be summoned under Section 319 Cr.P.C as additional accused only where strong and cogent evidence occurs against him, from the evidence led before the Court, and when no specific role is attributed to the proposed accused, then he cannot be summoned under Section 319 Cr.P.C. Moreover, when the allegations against the person are general in character, he cannot be summoned under Section 319 Cr.P.C to face trial.

I have given a thoughtful consideration to the record and submission. This Court is fully convinced that the petitioner along with Amit was not declared innocent by the Investigating Agency at the time of filing of challan and the challan was presented inadvertently only qua Pushpa Rani. Both have been summoned in addition as an accused immediately once the application under Section 319 was moved by Rajbir Kaur, who deposed that both the accused in connivance with Pushpa Rani filed false affidavit and

furnished false information to get the benefit of bail by committing the offence of cheating meaning thereby that there is *prima facie* cogent and sufficient material on record in the shape of sureties being furnished by Pushpa Rani against the same property on different occasions; one in the case of present petitioner Dimple and on second occasion in the case of Amit with false declaration in the shape of affidavit on oath.

The facts of the instant case are clinically looked as the material is cogent and sufficient enough raising a strong probability of conviction of the petitioner on the allegations with regard to connivance with Pushpa Rani who was inadvertently left out at the time of filing challan from the list of accused though was not declared innocent as well.

Further, keeping in view the judgment of the Hon'ble Supreme Court in Hardeep Singh's case (supra) and Babubhai Bhimabhai Bokhiria & Another's case (supra) this Court is of the considered view that there is no infirmity, perversity and illegality for any interference with the order dated 06.05.2022 and 19.11.2022 passed by the trial Court and as such the present petition, is dismissed.

10.03.2023
pchawla

(SANDEEP MOUDGIL)
JUDGE

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