

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

201

CRM-M-9049-2019 (O&M)
Date of Decision: 18.07.2023

CHARANJIT KAUR

... Petitioner

Versus

STATE OF PUNJAB AND ANR

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. LS Sidhu, Advocate
for the petitioner.

Mr. CL Pawar, Additional AG Punjab.

Mr. PS Sekhon, Advocate
for respondent No.2.

HARNARESH SINGH GILL, J.(Oral)

Prayer in this petition is for quashing the order dated 01.02.2019 passed by the learned Additional Sessions Judge, Mansa, in Criminal Revision No.33 dated 07.11.2017, vide which order dated 21.07.2017 passed by the learned Chief Judicial Magistrate, Mansa, summoning respondent No.2 and Sukhdeep Kaur, to face trial, was set aside, qua respondent No.2, namely, Darshan Singh.

Learned counsel for the petitioner submits that the petitioner had specifically named respondent No.2 and Sukhdeep Kaur, in the complaint moved to the police, on the basis whereof FIR No. 130 dated 09.12.2014 under Sections 465, 467, 468, 471, 420, 120-B IPC, Police Station City-II, Mansa, was registered; that the allegations against them were that they had prepared a forged power of attorney of Surjit Singh;

that the petitioner had stepped into witness box as PW1 and reiterated the version contained in the FIR and that, taking into consideration the said evidence, the learned trial Court vide order dated 21.07.2017, had summoned respondent No.2 and Sukhdeep Kaur, to face the trial. It is further submitted that the learned Additional Sessions Judge, Mansa, vide impugned order dated 01.02.2019, set aside the said well reasoned order, qua respondent No.2, namely, Darshan Singh, on legally untenable grounds.

It is further argued by the learned counsel for the petitioner that it is settled law that while considering an application under Section 319 Cr.P.C., the Court is required to form only a prima-facie opinion, coupled with the evidence on record that if summoned, the evidence on record would entail the punishment. While referring to the contents of the FIR and the deposition of the petitioner-complainant recorded in the Court as PW1, it is submitted that more than a prima-facie case was made out which is why the learned trial Court, had rightly summoned respondent No. 2 and Sukhdeep Kaur and there was no infirmity in the order passed by the trial Court.

On the other hand, learned counsel for respondent No.2 vehemently opposes the prayer made in the present petition. He argues that on a complaint moved by the petitioner, an inquiry was conducted by DSP(D) Mansa and respondent No.2 was found innocent and that during inquiry, Baldev Singh and Gurdeep Singh were found to be the real culprits and accordingly, the aforesaid FIR was registered against Baldev

Singh and Gurdeep Singh. He further submits that despite the fact that respondent No.2 was found innocent by the prosecution agency, he was summoned by the learned trial Court, on an application moved by the prosecution under Section 319 Cr.P.C. in a routine manner, but such illegality was rightly corrected by the learned Additional Sessions Judge, Mansa, while passing the impugned order.

In support of his contentions, learned counsel for respondent No.2 relies upon the judgment dated 17.02.2000 passed by the Hon'ble Apex Court in Michael Machado and another vs Central Bureau of Investigation and another, 2000 (2) RCR (Criminal) 75.

I have heard the learned counsel for the parties.

It may be noticed that the petitioner-complainant moved a complaint to SSP, Mansa, against respondent No.2 and Sukhdeep Kaur. On the said complaint, an inquiry was conducted by DSP (D) Mansa and respondent No.2 and said Sukhdeep Kaur, were found innocent. During the said inquiry, Baldev Singh and Gurdeep Singh were found to be the real culprits and accordingly, the aforesaid FIR was registered against them.

The Hon'ble Supreme Court in Michael Machado's case (supra) has held as under:-

'The court while deciding whether to invoke the power under Section 319 of the Code, must address itself about the other constraints imposed by the first limb of sub- section (4), that proceedings in respect of newly added persons shall be commenced afresh and the witnesses re-examined. The whole proceedings must be re-commenced

from the beginning of the trial, summon the witnesses once again and examine them and cross-examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are quite a large in number the court must seriously consider whether the objects sought to be achieved by such exercise is worth wasting the whole labour already undertaken. Unless the court is hopeful that there is reasonable prospect of the case as against the newly brought accused ending in conviction of the offence concerned we would say that the court should refrain from adopting such a course of action.'

The learned Additional Sessions Judge, Mansa, while passing the impugned order, has rightly held that when the allegations against a person are general in character, he cannot be summoned on the application under Section 319 Cr.P.C. to face the trial and the discretion to summon accused under the said Section is to be used sparingly by the Court.

It is settled that in order to summon an accused under Section 319 Cr.P.C., there must be cogent and convincing evidence on record, so as to form an opinion that if such evidence goes unrebutted, the same would entail the conviction of the person so summoned. However, in the instant case, as would emerge from the record, there are only vague allegations in the FIR regarding the participation of respondent No.2 in the occurrence in question. Even the police, during investigation, had found that respondent No.2 had been implicated being relative of accused -Baldev Singh. The case of the complainant hinges around the transfer of her property on the basis of forged documents, but

during investigation, the police had found that the alleged forged documents, were not prepared by respondent No.2 or at his instance.

In view of the above, I do not find any infirmity or illegality in the order dated 01.02.2019 passed by the learned Additional Sessions Judge, Mansa.

Dismissed.

18.07.2023

Aman Jain

(HARNARESH SINGH GILL)

JUDGE

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