

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

SR. No.258

CRM-M-17939-2017 (O&M)
Date of decision:16.10.2023

Harjinder Singh

...Petitioner

Versus

State of Punjab

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Mr. Bhrigu Dutt Sharma, Advocate for the petitioner.
Mr. Mohit Chaudhary, AAG, Punjab.

N.S. SHEKHAWAT, J.

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with prayer to quash the order dated 19.05.2016 (Annexure P-4) passed by the Court of Judicial Magistrate, 1st Class, Jalandhar, whereby the petitioner had been summoned as an additional accused to face trial under Section 319 Cr.P.C. and the order dated 06.10.2016 (Annexure P-6) passed by the Court of Additional Sessions Judge, Jalandhar, whereby the revision petition filed by the petitioner against the said order has also been dismissed.

2. As per the case of the prosecution, FIR No.20 dated 24.01.2014 under Sections 223/224 IPC was registered at Police Station Division No.1, Jalandhar, on the basis of the statement made by Constable Paramjit Singh. As per him, he was on duty from 06.00 AM to 10.00 AM and HC Harjinder Singh, who was working as a night Munshi, was also present at the police station. At about 05:45 AM, he was getting ready for his duty and he saw that Sentry, C.Jaspal Singh and night Munshi HC Harjinder Singh were running inside and outside the police station and he enquired from them as

to what had happened. Both of them informed him that Sukhdev Singh @ Biru, accused, who was on police remand in case FIR No.6/2014 and was confined in the lockup of the police station, had escaped from the police station, on the pretext of going to the toilet. The complainant and another police officials made efforts to search him by running here and there, but he could not be found. Consequently, it was stated that Sukhdev Singh @ Biru, accused, had escaped on the pretext of going to toilet, due to lapse on the part of Sentry C.Jaspal Singh and night Munshi Harjinder Singh. With these allegations, the FIR in the present case was registered against the petitioner and C.Jaspal Singh.

3. After registration of the FIR, the investigation was carried out by Additional Deputy Commissioner of Police, Headquarter and Security, Jalandhar and it was found that C.Jaspal Singh had taken Sukhdev Singh @ Biru, accused, out of the police lockup without any authority and without informing the petitioner as Sukhdev Singh @ Biru had expressed his intention to go to the toilet. Furthermore, even the petitioner had created lot of pressure on Sukhdev Singh @ Biru, due to which he had surrendered and ultimately vide enquiry report Annexure P-2, the petitioner was found to be innocent. Accordingly, the final report under Section 173 Cr.P.C. was presented only against Sukhdev Singh @ Biru and C.Jaspal Singh only.

4. After the presentation of the challan, the prosecution examined C.Paramjit Singh, on whose statement the FIR was registered in the present case and he had reiterated the averments made in the FIR. After recording the statement of the complainant (Annexure P-3) on 24.02.2016, the prosecution moved an application 319 Cr.P.C. for summoning the petitioner

as an additional accused and vide order dated 19.05.2016, the Judicial Magistrate allowed the said application and the petitioner was ordered to be summoned as an additional accused to face trial along with already arrayed accused. The petitioner filed a revision petition against the said order dated 19.05.2016, which came to be dismissed by the Additional Sessions Judge, Jalandhar, vide his order dated 06.10.2016.

5. Feeling aggrieved against the above-said impugned orders, the present revision petition has been filed.

6. Learned counsel for the petitioner submits that the petitioner has been wrongly summoned as an additional accused by the trial Court, while exercising the powers under Section 319 Cr.P.C. Even detailed submissions were made by way of the revision petition before the Sessions Court, however while passing the impugned order (Annexure P-6), the Court of Additional Sessions Judge completely overlooked the said submissions. Learned counsel further submitted that in the present case, the application under Section 319 Cr.P.C. was allowed only on the basis of statement of C. Paramjit Singh, who was examined as a prosecution witness. While appearing as a witness, he had stated the exact version, which he had stated while getting the FIR registered. However, during the course of investigation, the said statement was partly disbelieved and after detailed investigation by by Additional Deputy Commission of Police, Headquarter and Security, Jalandhar, it was established that the petitioner had no role in escaping of Sukhdev Singh @ Biru, accused. During the investigation, it was also discovered that Sukhdev Singh @ Biru, accused, had expressed his desire to go to the toilet in the wee hours to C. Jaspal Singh as the toilet in

the police lockup was not available and the petitioner had no knowledge with regard to the said development. Since he was permitted to go to the toilet by C. Jaspal Singh, the petitioner could not be attributed any negligence in performance of his official duties. Learned counsel further contends that in the present case, the petitioner was wrongly summoned under Sections 223/224 IPC in view of the bar contained in Section 197 Cr.P.C. Still further, apart from the statement of C.Paramjit Singh, there was no other evidence, which could prove the complicity of the present petitioner in the crime.

7. On the other hand learned State Counsel submitted that the petitioner had been rightly summoned by the trial Court and even the revision preferred by him has also been dismissed by the Court of Additional Sessions Judge, Jalandhar. Even detailed reasons have been recorded by the trial Court, while summoning the petitioner and the said reasons have been upheld by the revisional court as well.

8. I have heard learned counsel for the parties and perused the record minutely.

9. Before proceeding further, it would be apposite to refer to the provisions of Section 319 Cr.P.C. The same are reproduced hereinbelow:-

“319 Cr.P.C. -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.

(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 of, 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 re-heard;

(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.”

10. The Hon’ble Supreme Court of India has dealt with the issue in hand in a number of judgments and two of the most celebrated judgements in this regard are discussed hereinbelow:-

11. In **“Michael Machado and another versus Central Bureau of Investigation and another, 2000 (3) SCC 262”**, the Hon’ble Supreme Court of India held as under:-

“11. The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that

other person could as well be tried along with the already arraigned accused.

12. But even then, what is conferred on the court is only a discretion as could be discerned from the words the court may proceed against such person. The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons”.

12. The Hon’ble Supreme Court in ‘**Manjeet Singh versus State of Haryana & others, 2021(4) RCR (Criminal) 25**’, held as under:-

“13. The ratio of the aforesaid decisions on the scope and ambit of the powers of the Court under section 319 CrPC, 1973 can be summarized as under:

- (i) That while exercising the powers under section 319 CrPC, 1973 and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;*
- (ii) for the empowerment of the courts to ensure that the criminal administration of justice works properly;*
- (iii) the law has been properly codified and modified by the legislature under the CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;*
- (iv) to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;*

- (v) *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;*
- (vi) *Section 319 CrPC, 1973 allows the court to proceed against any person who is not an accused in a case before it;*
- (vii) *the court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency;*
- (viii) *section 319 CrPC, 1973 is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial;*
- (ix) *the power under section 319(1) CrPC, 1973 can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207 / 208 CrPC, committal, etc. which is only a pretrial stage intended to put the process into motion;*
- (x) *the court can exercise the power under section 319 CrPC, 1973 only after the trial proceeds and commences with the recording of the evidence;*
- (xi) *the word "evidence" in section 319 CrPC, 1973 means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents;*
- (xii) *it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under section 319 CrPC, 1973 is to be*

exercised and not on the basis of material collected during the investigation;

(xiii) if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under section 319 CrPC, 1973 and can proceed against such other person(s);

(xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under section 319 CrPC, 1973 can be exercised;

(xv) that power under section 319 CrPC, 1973 can be exercised even at the stage of completion of examination-in-chief and the court need not wait till the said evidence is tested on cross-examination;

(xvi) even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of section 319 CrPC, 1973 and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses);

(xvii) while exercising the powers under section 319 CrPC, 1973 the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial”.

13. A perusal of Section 319 Cr.P.C. as also the judgment in

Michael Machado case's (supra) and Manjeet Singh's case (supra)

would clearly show that the Court has wide powers to summon a

person as an additional who has been exonerated by the Investigating

Agency, if it finds that there is sufficient evidence available against the said person in order to try him along with the accused already facing trial. However, there is no compelling duty to summon an accused. The discretionary power so conferred should only be exercised to achieve justice and must be based on the quality of evidence collected. In fact, the Court being the sole repository of justice, there is a duty cast upon it to uphold the law and ensure that the real accused should not get away by manipulating the Investigating Agency/Prosecuting Agency. What the Court needs to examine while adjudicating upon an application under Section 319 Cr.P.C. is that there should be evidence available on the file in the shape of oral evidence or documentary evidence in order to invoke its powers to summon an additional accused under Section 319 Cr.P.C.”

14. In the present case, from the perusal of the record, it is evident that except the statement of C. Paramjit Singh, there was no other evidence against the present petitioner and even in the said statement, C. Paramjit Singh had only reiterated the averments of the FIR. After registration of the FIR, the police had also investigated the matter in detail and even the enquiry was conducted by Additional Deputy Commission of Police, Headquarter and Security, Jalandhar also. During the course of investigation, it was found that only C. Jaspal Singh had permitted the accused Sukhdev Singh @ Biru to go to the toilet and the petitioner had no knowledge with regard to the said development. Still further, even under the pressure from the petitioner only, Sukhdev Singh @ Biru had surrendered and in the enquiry by the higher officials, the police could not find any evidence to

prove the involvement of the present petitioner. Even it was apparent from the enquiry report (Annexure P-2), it is clear that before recording the conclusion, the police had associated all the concerned persons in the enquiry and found the petitioner innocent. Consequently, the trial Court ordered the summoning of the petitioner under Section 319 Cr.P.C. in a casual and cavalier manner. In fact, the powers under Section 319 Cr.P.C. are discretionary in nature and are extraordinary powers. The law is well settled that such powers have to be exercised sparingly and only in exceptional circumstances, where the evidence so warrants. Such powers are not to be exercised, because the Magistrate is of the opinion that some other person may also be guilty of committing that offence. A person can be summoned under Section 319 Cr.P.C. only when strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised.

15. Considering the peculiar facts and circumstances of the case noted above and in view of the law laid down by the Hon'ble Supreme Court, this Court is of the considered view that since the impugned orders passed by the learned courts below have been found to be suffering from patent illegality, the same cannot be sustained, therefore, the present petition stands allowed and the impugned orders are hereby set aside. Pending application, if any, shall also stand disposed of.

(N.S. SHEKHAWAT)
JUDGE

16.10.2023
mks

Whether Speaking/Reasoned: YES / NO
Whether Reportable: YES / NO