

CRM-M-18132-2017

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-18132-2017
Date of decision : 24.07.2023

GORA LAL GOYAL & ANOTHER

... Petitioners

Versus

RAVINDER KUMAR & ANOTHER

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. PKS Phoolka, Advocate
for the petitioners.

Dr. Rao P.S. Girwan, Advocate
for respondent No.1.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab
for respondent No.2.

JASJIT SINGH BEDI, J. (ORAL)

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the judgment dated 23.08.2016 (Annexure P-4) passed by the Additional Sessions Judge, Bathinda whereby the revision petition against the order dated 06.04.2016 (Annexure P-3) passed by the JMIC, Bathinda summoning the respondent No.1 under Section 319 Cr.P.C. has been allowed in FIR No.115 dated 18.07.2014 (Annexure P-1) under Sections 420/34 IPC at Police Station Canal Colony, Bathinda.

2. The brief facts as emanating from the pleadings are that one Gora Lal Goyal (petitioner No.1/complainant) got registered the aforementioned FIR with the allegations that accused Mohan Lal was the owner in possession of a plot measuring 300 sq. yards comprising in Khasra No.4757 min (0-6) Khata No.1490/6749/2 situated at Street

No.5, Partap Nagar, Near Naina Devi Mandir, Bathinda vide sale deed dated 26.07.2002. Mohan Lal sold the said plot to Ravinder Kumar (respondent No.1) vide sale deed dated 24.09.2004 with a recital that the property was free from all sorts of encumbrances. The said Ravinder Kumar sold the aforementioned plot to the complainant and his wife Sonia Goyal, the present complainants vide sale deed dated 11.11.2008. Ravinder Kumar had assured the complainants that the said property was free from all sorts of encumbrances. However, the petitioners had received a possession notice dated 08.02.2013 from the ICICI Bank, Bibi Wala Road, Bathinda stating that Mohan Lal and Sushila Devi were to pay a sum of Rs.3,32,106/- on account of the loan availed by them on the property in question. Therefore, the petitioners had been cheated by the accused including respondent No.1.

3. After conducting investigation, while Mohan Lal and Sushila Devi were challaned by the police of Police Station Canal Colony, Bathinda, however, it was opined that they had not only cheated the petitioners but had also committed a fraud with Ravinder Kumar (respondent No.1).

4. During the course of the trial, the prosecution moved an application under Section 319 Cr.P.C. to summon Ravinder Kumar (respondent No.1) as an additional accused. The said application was allowed by the Court of JMIC, Bathinda vide its order dated 06.04.2016. The copy of the said order is annexed as Annexure P-3 to the petition.

5. Aggrieved with the aforementioned judgment, Ravinder Kumar (respondent No.1) preferred a revision petition before the Court

of Additional Sessions Judge, Bathinda and the summoning order was set aside by the Court of Additional Sessions Judge, Bathinda vide judgment dated 23.08.2016 (Annexure P-4). The copy of the said judgment of the Additional Sessions Judge, Bathinda is annexed as Annexure P-4 to the petition.

It is this order which is under challenge in the present petition.

6. The learned counsel for the petitioners/complainants contends that Ravinder Kumar (respondent No.1) was an equal party to the fraud. He was aware of the fact that the property purchased by him from Mohan Lal and Sushila Devi was not free from any encumbrance. In fact, he had deposited a loan amount of Rs.1,58,000/- in the loan account of Mohan Lal and therefore, as the sale deed executed by him in favour of the petitioners on 11.11.2008 contained the recital that the property was free from all encumbrances, Ravinder Kumar (respondent No.1) was equally liable along with the challaned accused and had therefore been rightly summoned by the Trial Court and wrongly discharged by the Lower Appellate Court. Even otherwise, the petitioners had duly supported the prosecution case in Court against the respondent No.1-Ravinder Kumar as well. He therefore, prays that the impugned passed by the Additional Sessions Judge, Bathinda, whereby Ravinder Kumar (respondent No.1) was discharged be set aside and he be summoned to face trial as an additional accused along with the accused already facing trial.

7. On the other hand, the learned counsel for respondent No.1- Ravinder Kumar contends that the answering respondent himself is equally aggrieved by the conduct of Mohan Lal and Sushila Devi. He contends that the sale deed dated 24.09.2004 executed in his favour contained the same recital that the property was free from all encumbrances. In fact, he had only sold the said property four years after his purchase which shows that he was himself unaware of the fact that a loan had been availed by Mohan Lal on the property and a certain amount was outstanding towards the bank. As per his contention, he became aware of the outstanding loan amount after he had sold the property to the petitioner and even then had deposited a sum of Rs.1,58,400/- in the loan account of Mohan Lal which amount had also been withdrawn by Mohan Lal. Therefore, it was Mohan Lal and his wife Sushila Devi who had cheated not only the petitioners but also him. It is therefore, his contention that the judgment of discharge dated 23.08.2016 (Annexure P-4) passed by the Additional Sessions Judge, Bathinda had rightly been passed.

8. The counsel for respondent No.2-State contends that respondent No.1 ought to be summoned to face trial as an additional accused as there was sufficient evidence on record to establish his prima facie culpability along with the accused facing trial.

9. I have heard the learned counsel for the parties at length.

10. Before proceeding further in the matter, it would be apposite to refer to the provisions of Section 319 Cr.P.C.

Section 319 Cr.P.C, reads ad 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.

(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.”

11. The Hon'ble Supreme Court in the case of **Hardeep Singh Versus State of Punjab & others, 2014(1) R.C.R. (Criminal) 623**, held as under:-

“Question No. IV

Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is

satisfied that the accused summoned will in all likelihood be convicted?

A. Though under [Section 319\(4\)\(b\)](#) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under [Section 319](#) Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial-therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.”

[emphasis supplied]

The Hon'ble Supreme Court in the case of **Brijendra Singh**

& others Versus State of Rajasthan, 2017(3) R.C.R. (Criminal) 374,

held as under:-

“11. In Hardeep Singh’s case, the Constitution Bench has also settled the controversy on the issue as to whether the word ‘evidence’ used in [Section 319\(1\)](#) Cr.P.C. has been used in a comprehensive sense and indicates the evidence collected during investigation or the word ‘evidence’ is limited to the evidence recorded during trial. It is held that it is that material, after cognizance is taken by the Court, that is available to it while making an inquiry into or trying an offence, which the court can utilise or take into consideration for supporting reasons to summon any

person on the basis of evidence adduced before the Court. The word 'evidence' has to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. It means that the power to proceed against any person after summoning him can be exercised on the basis of any such material as brought forth before it. At the same time, this Court cautioned that the duty and obligation of the Court becomes more onerous to invoke such powers consciously on such material after evidence has been led during trial. The Court also clarified that 'evidence' under [Section 319 Cr.P.C.](#) could even be examination-in-chief and the Court is not required to wait till such evidence is tested on cross-examination, as it is the satisfaction of the Court which can be gathered from the reasons recorded by the Court in respect of complicity of some other person(s) not facing trial in the offence.

12. The moot question, however, is the degree of satisfaction that is required for invoking the powers under [Section 319 Cr.P.C.](#) and the related question is as to in what situations this power should be exercised in respect of a person named in the FIR but not charge-sheeted. These two aspects were also specifically dealt with by the Constitution Bench in Hardeep Singh's case and answered in the following manner:

“95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under [Section 319 Cr.P.C.](#), though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in [Vikas v. State of Rajasthan](#) [2013(4) RCR (Criminal) 948: 2013(6) Recent Apex Judgments (R.A.J.) 356: (2014) 3 SCC 321], held that on

the objective satisfaction of the court a person may be “arrested” or “summoned”, as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

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105. Power under [Section 319](#) Cr.P.C. is a discretionary and an extraordinary 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.

106. 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](#) 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.

(emphasis supplied)

13. In order to answer the question, some of the principles enunciated in Hardeep Singh's case may be recapitulated:

Power under [Section 319 Cr.P.C.](#) can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some 'evidence' against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The 'evidence' herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under [Section 319 Cr.P.C.](#) No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under [Section 319 Cr.P.C.](#) and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges

against others in respect of whom charge sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.”

[emphasis supplied]

The Hon'ble Supreme Court in the case of **Kailash Versus State of Rajasthan & another, 2008(2) R.C.R. (Criminal) 200**, held as under:-

“9. The powers under Section 319 Criminal Procedure Code to proceed against any person who is not the accused are couched in the following words :

"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.

(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 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.

A glance at these provisions would suggest that during the trial it has to appear from the evidence that a person not being an accused has committed any offence for which such person could be tried together with the accused who are also being tried. The key words in this Section are "it appears from the evidence"...."any person"...."has committed any offence". It is not, therefore, that merely because some witnesses have mentioned the name of such person or that there is some material against that person, the discretion under Section 319 Criminal Procedure Code would be used by the court. This is apart from the fact that such person against whom such discretion is used, should be a person who could be tried together with the accused against whom the trial is already going on. This Court has, time and again, declared that the discretion under Section 319 Criminal Procedure Code has to be exercised very sparingly and with caution and only when the concerned court is satisfied that some offence has been committed by such person. This power has to be essentially exercised only on the basis of the evidence. It could, therefore, be used only after the legal evidence comes on record and from that evidence it appears that the concerned person has committed an offence. The words "it appears" are not to be read lightly. In that the court would have to be circumspect while exercising this power and would have to apply the caution which the language of the Section demands.

(emphasis supplied)

The Hon'ble Supreme Court in the case of *Guriya @ Tabassum Tauquir & others Versus State of Bihar and another, 2007(4) R.C.R. (Criminal) 497*, held as under:-

14. Power under Section 319 of the Code can be exercised by the Court suo motu or on an application by someone including accused already before it, if it is satisfied that any person other than accused has committed an offence and he is to be tried together with the accused. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates evidence of witnesses given in Court. Under Sub-section (4)(1)(b) of the aforesaid provision, it is specifically made clear that it will be presumed that newly added person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced. That would show that by virtue of Sub-section (4)(1)(b) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned. (See Lok Ram v. Nihal Singh and Anr., 2006(2) RCR (Criminal) 707 : 2006(2) Apex Criminal 71

(emphasis supplied)

12. Coming back to the facts of the present case, it may be pertinent to point out that Mohan Lal had executed a sale deed in favour of Ravinder Kumar (respondent No.1) on 24.09.2004 with the recital that the property was free from all encumbrances. Ravinder Kumar

(respondent No.1) sold the property to the present complainants/petitioners on 11.11.2008 i.e. four years after he had purchased the same. The recital in the sale deed dated 11.11.2008 was similar to that in the sale deed dated 24.09.2004. The fact that the respondent No.1 had retained the plot for a period of 04 years would itself show that he was unaware of the fraud. In fact, if the respondent No.1 had any prior knowledge of the encumbrance on the property, he ought to have sold it much earlier it being a property with a defective title. Further, even after he became aware of the fact there was an outstanding loan on the property after he had executed the sale deed in favour of the petitioners/complainants, he deposited a sum of Rs.1,58,400/- in the loan account of Mohan Lal with the ICICI Bank which amount also stood withdrawn by Mohan Lal. Therefore, it is apparent that it was only Mohan Lal and his wife Sushila Devi who had committed the offence in question and not the answering respondent No.1.

13. In the light of the aforementioned discussion as also the law as enumerated by the Hon'ble Supreme Court, it is apparent that the power under Section 319 Cr.P.C. is a discretionary power and an extraordinary one and the same is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. Only where strong and cogent material is available against a person from the evidence led before the Court that such power should be exercised and not in a casual or cavalier manner. The *prima facie* opinion which is to be formed requires stronger evidence than mere probability of his complicity. In the

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had any specific inculpatory role to play or was in conspiracy with the main accused so as to entail his summoning as an additional accused under Section 319 Cr.P.C. to face trial with the other accused.

14. In view of the above, I find no merit in the present petition and therefore, the same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

24.07.2023
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No