

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

(Sr. No. 218)

CRM-M No. 31211 of 2021 (O&M)

Date of decision : 06.01.2023

Vibhor Goel

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL

Present : Mr. Gobind Goel, Advocate and
Mr. Rahul Rana, Advocate for the petitioner.
Mr. Rajiv Sidhu, DAG, Haryana.

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DEEPAK SIBAL, J. (Oral)

Through the present petition the petitioner seeks setting aside of order dated 27.02.2020 passed by the Judicial Magistrate First Class, Ambala (for short - the trial court) through which an application filed by the petitioner under Section 319 of the Code of Criminal Procedure, 1973 (for short – the Code) for summoning of Maninder Bir Singh, Baljeet Kaur, Ritu Kochhar, Gurpreet Kaur, Reema Aggarwal, Kavita Sachdeva and Pooja Grover (hereinafter referred to as the “proposed accused”) as additional accused was dismissed.

The petitioner filed a complaint with the police alleging therein that M/s Mahesh Dal and Rice Mills (for short – the firm) of which the petitioner was one of the partners, owned land in district Ambala out of which some land was sold to Kuljeet Kochhar Land Developers Pvt. Ltd.

(for short - the Company). However, Maninder Bir Singh Kochhar, Kuljeet Kochhar, Reema Aggarwal, Gurpreet Kaur, Kavita Sachdeva, Devender Singh, Pooja Grover and Paramjeet Singh, who are the Directors of the Company carved out and sold plots which also included property of the firm which had not been sold to the Company. Thus, by alienating the firm's land without any authority all the aforesaid persons had committed forgery and fraud. On the petitioner's complaint the police registered FIR No.10 dated 11.01.2014 under Sections 420, 467, 468 and 471 IPC at Police Station Ambala City. Investigations which ensued revealed that out of the many persons against whom the petitioner had raised accusations it was only Kuljeet Singh Kochhar who was guilty as he was the only person who was found to have executed sale deeds with regard to the firm's property which had not been sold to the Company. As the police found no evidence of forgery or fraud by Maninder Bir Singh Kochhar, Reema Aggarwal, Gurpreet Kaur, Kavita Sachdeva, Devender Singh, Pooja Grover and Paramjeet Singh it filed a report under Section 173 of the Code seeking therein to prosecute only Kuljeet Singh Kochhar. On the basis of the final report filed by the police the Trial Court framed charges against Kuljeet Singh Kochhar and put him to trial during the course of which, after the petitioner had been examined in-chief as one of the witnesses for the prosecution, an application was filed by him under Section 319 of the Code seeking therein to summon the proposed accused as additional accused as according to the petitioner, along with Kuljeet Singh Kochhar, they had also committed fraud and forgery and that they had wrongly been found innocent by the police. The Trial Court was of the view that solely on the basis of the

petitioner's bald statement and without there being any further clinching evidence on the record, the proposed persons could not be summoned especially when the police, after thorough investigation, had found them to be innocent. Accordingly, the petitioner's application was dismissed through the order which is the subject matter of challenge through the present proceedings.

Learned counsel for the petitioner submitted that in the complaint filed by the petitioner as also in his testimony before the Trial Court he had specifically raised allegations against the proposed accused; there was also enough evidence against the proposed accused on the police file; in the report filed by the police under Section 173 of the Code there was reference to the sale deeds through which the firm's land had been fraudulently sold; it was duly recorded in such sale deeds that the same were being executed by Kuljeet Singh Kochhar on the strength of a resolution passed by the Company; since the proposed accused, as Directors of the Company, were signatories to the afore referred resolution, they along with Kuljeet Singh, were also part of the conspiracy to the fraud and forgery and therefore, should have also been summoned by the trial court to face trial.

To buttress the afore submissions learned counsel for the petitioner drew the attention of this Court to an extract of the Company's resolution dated 09.02.2010 (Annexure P-4) as per which Kuljeet Kochhar/Maninder Bir Singh Kochhar, in the capacity of Directors of the Company, had been authorised to sell the plots of the Company.

Learned State counsel submitted that against the impugned

order, the petitioner had an efficacious remedy of filing a revision petition before the Sessions Court under Section 397 of the Code; irrespective of the above, it was submitted that the impugned order was passed on the basis of the record before the trial court; the petitioner's bald statement could not be made the basis to summon the proposed accused to face trial and that there was no evidence before the trial court which would even point a finger at the proposed accused let alone accuse them of having committed a criminal offence.

Learned counsel for the parties have been heard at length and with their able assistance the record of the case has also been perused.

As per Section 319 of the Code, where, in the course of any inquiry into or trial of an offence, it appears from the evidence that any person, not being an accused, has also committed an offence for which such person could be tried together with the accused already facing trial, the court may proceed against such person for the offence which he appears to have committed. Thus, the court during the course of a trial, on the basis of any evidence which comes before it, is fully empowered to proceed against any person even if his name is not included in the FIR or the charge-sheet. Section 319 of the Code ensures that all those who appear guilty of an offence are put to trial. However, the power under Section 319 of the Code being discretionary is to be exercised with caution and only in those cases where the circumstances so warrant. It is not to be exercised only because the Magistrate or the Sessions Judge is of the opinion that some other person may also appear to be guilty of having committed an offence. Such power is to be resorted to only where strong and cogent evidence comes on

the record and should not be exercised in a casual or cavalier manner. The test before exercise of such power is the recording of an opinion which is just short of satisfaction of the trial court that the evidence which has come on record, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 of the Code.

The petitioner's testimony before the trial court on which primary reliance has been placed to summon the proposed accused to face trial along with Kuljeet Singh Kochhar has not been placed on the record of this Court. No time was also sought from this Court to do the needful. Therefore, it is not possible to assess the petitioner's case on that count.

The proposed accused are also sought to be summoned to face trial on the basis of allegations made by the petitioner in his complaint on the basis whereof the FIR in question was lodged. The petitioner's complaint has been perused. The same is found to contain allegations that only a part of the land of the firm had been sold to the Company but the Company had sold plots which included land of the firm that had not been sold to it and therefore all its Directors *i.e.* Kuljeet Singh Kochhar and the proposed accused should be prosecuted for forgery and fraud. The constitution of the Board of Directors of the Company at the relevant time has not been even referred to in the complaint. No record has been placed on the record of the trial court or even this Court in this regard. There is also not found any allegation in the complaint with regard to any specific role played by any of the proposed accused in the unauthorised sale of the firm's land. Only because the proposed accused were Directors of the Company

they cannot be made to face prosecution/trial especially when the police, after investigation, has found that it was only Kuljeet Singh Kochhar who, at the relevant time, had executed all the sale deeds on behalf of the Company and that none of the proposed accused played any individual part in such sales.

The petitioner's application, filed by him under Section 319 of the Code, has also been gone into. The same is found to contain vague averments with regard to the role of any of the proposed accused in the alleged fraudulent sale of the firm's land. Only bald accusations against the proposed accused have been made. Since after investigation the police had found the proposed accused to be innocent, the accusations qua them, in the petitioner's application under Section 319 of the Code, should have been specific and pointed.

Before this Court the petitioner solely relies on an undated extract of the resolution of the Board of Directors of the Company passed on 09.02.2010. The same reads as under :-

*“KOCHHAR LAND DEVELOPERS PVT. LTD.
DEALS IN ALL TYPES OF PROPERTIES
SITE OFFICE RLY. ROAD, VILLAGE HUMYANPUR
SIRHAND, 1012/7, V.E. AMBALA CITY.*

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<i>fNo.</i>	<i>Dated</i>
<i>“EXTRACT OF BOARD'S RESOLUTION PASSED ON 9TH FEBRUARY, 2010”</i>	

Resolved that any one of Mr. Kuljeet Kochhar / Maninderbir Singh Kochhar Directors of the Co. is hereby authorize to sell the plots of the Company and complete the other formalities require for sale of land at PATTI RANGRA BAST No.40 Teh. Ambala so made with Registrar of properties.

Verified to be True copy.

*For on behalf of
Kochhar Land Developers Pvt. Ltd.
-sd-*

Director”

The afore extract was not referred to in the petitioner's complaint or his application under Section 319 of the Code. It also was not on the record of the trial court. Nonetheless, the same has been considered. As per the afore extract it had been resolved that either Kuljeet Singh Kochhar or Maninder Bir Singh Kochhar, who are Directors of the Company, are authorised to sell the plots of the Company and complete other formalities regarding sale of land at Ambala. This document does not give any authority to Baljeet Kaur, Gurpreet Kaur, Reema Aggarwal, Kavita Sachdeva and Pooja Grover who are also alleged to be the Directors of the Company at the relevant time. The same also does not reveal as to who were the signatories to the resolution. Nonetheless, all that the resolution says is that Kuljeet Singh Kochhar and Maninder Bir Singh Kochhar are authorised to sell plots of the Company. Thus, Kuljeet Singh Kochhar and Maninder Bir Singh Kochhar were authorised only to sell plots which belonged to the Company and not the plots which did not belong to the Company. If, on his own, Kuljeet Singh Kochhar acted otherwise, the other Directors could not be blamed.

In the light of the afore discussion, no merit is found in the instant petition.

Dismissed.

No costs.

06.01.2023

sunil yadav

**(DEEPAK SIBAL)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No