

CRM-M-29984 of 2015

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

CRM-M-29984 of 2015

Date of Decision:06.02.2023

Ajit Singh @ Jeet Singh

.....Petitioner

Vs.

State of Haryana and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Ashish Pannu, Advocate for the petitioner.

Mr. Randhir Singh, Addl. AG, Haryana.

Ms. Sharmila Sharma, Advocate for respondent No.2.

DEEPAK GUPTA, J.

During the trial of case FIR No.180 dated 10.06.2011 registered at Police Station Gannaur, District Sonapat under Sections 419, 420, 467, 471, 120-B lodged at the instance of petitioner Ajit Singh, respondent No.2 – Mani Ram was summoned to face trial under Section 319 Cr.P.C by learned Judicial Magistrate Ist Class, Gannaur vide order dated 30.04.2015. However, the revision filed by respondent No.2 has been accepted by learned Additional Sessions Judge, Sonapat vide impugned order dated 26.05.2015 (Annexure P.3), against which this petition under Section 482 Cr.P.C has been filed so as to quash the said order dated 26.05.2015; and to order the summoning of respondent No.2 as additional accused to face trial.

2. FIR was lodged on the complaint of petitioner, as per which he and his brother agreed to purchase certain land at the behest of property dealer- respondent No.2 for an amount of ₹88 lacs. Sale deed

CRM-M-29984 of 2015

was executed on 05.11.2007. Amount was paid to respondent No.2 so as to purchase the land, who had even furnished a receipt dated 05.11.2007 and had executed an affidavit some days prior to the receipt. However, later on, it transpired that land in question was owned by someone else, who had already expired in 1993 and thus, respondent No.2 had produced a fictitious person in his place to get the sale deed registered and this way, he defrauded the petitioner of huge amount of money.

3. It is contended by learned counsel for the petitioner that due to the influence of respondent No.2, police despite investigation placed him in column No.2 of the challan. It is at the stage of recording the statement of the accused challaned by the Police under Section 313 Cr.P.C that learned Magistrate noted that real culprit was respondent No.2 and so, summoned him to face trial. However, in the revision filed by respondent No.2, learned Additional Sessions Judge, without serving any notice to the State or to the complainant- petitioner set aside the summoning order. It is contended that in his statement as PW5, Ajit Singh – petitioner had fully supported the version given in the FIR, which revealed respondent No.2- Mani Ram to be the whole conspirator and the real culprit.

4. In the reply filed by way of affidavit of Shri Satish Kumar, Deputy Superintendent of Police, Ganaur, on behalf of respondent No.1 – State of Haryana, it is submitted that it had been alleged in the FIR by the complainant that respondent had given an affidavit dated 20.10.2007 and receipt dated 05.11.2007. During investigation, said alleged affidavit and receipt were sent to FSL Madhuban and these were compared with the specimen signatures of respondent No.2. FSL, Madhuban reported that

CRM-M-29984 of 2015

disputed signatures were not that of respondent No.2. There was no other evidence against said respondent No.2 and so, he was placed in column No.2 of the challan. It is further submitted that neither the prosecution nor the complainant moved application under Section 319 Cr.P.C and that the Magistrate at his own head summoned respondent No.2 under Section 319 Cr.P.C.

5. Respondent No.2 Mani Ram in his separate reply submitted that dispute primarily relates to the fact that land belonging to one Satyapal son of Runda had been sold to the petitioner and his brother by way of impersonation. However, the matter was compromised between the parties and the civil suit filed by Satyapal was withdrawn. He placed on record statements made by Satyapal in this regard. It is also submitted that in the revenue record, complainant and his brother are now recorded to be owner in possession of the land in dispute. He submitted that in the revision filed by him, learned Additional Sessions Judge has rightly set aside the summoning order.

6. Having considered the submissions of both the sides, I do not find any merit in this revision.

7. Section 319 Cr.P.C. reads as 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) & (3) xxxxxxxxxxxx (not relevant)

(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.”

8. The issue regarding the scope and extent of power of the Court to arraign any person as an accused during the course of inquiry or trial in exercise of the power under section 319 Cr.P.C. has been set at rest by a Constitutional Bench of Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab, 2014 (1) R.C.R. (Criminal) 623** followed by another pronouncement in **Babubhai Bhimabhai Bokhiria and Another Vs. State of Gujarat and others, 2014 (2) RCR (Criminal) (SC) 915.**

9. After reviewing various precedents, Hon'ble Apex Court summarized the legal position in **Hardeep Singh's case (cited supra)** in the following words:

"Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary 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.

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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C."

10. After referring to aforesaid authority of Constitutional Bench, Hon'ble Supreme Court held in **Babubhai Bhimabhai Bokhiria's case (cited supra)** as under:

"Section 319 of the Code confers power on the trial court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of prima facie case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher."

Same view has been reiterated in **Shiv Prakash Mishra vs. State of Uttar Pradesh 2019 (5) RCR (Criminal) 946.**

11. In the light of legal position as afore-said, when the factual matrix of this case is analysed, it is found that the allegation against respondent No.2 was that he had been paid by the complainant an amount of ₹88 lacs, regarding which respondent No.2 had issued a receipt dated 05.11.2007 and had earlier given an affidavit dated 20.10.2007. However, during investigation, both these documents were sent to FSL, Madhuban and the disputed signatures appearing thereon were compared with the specimen signatures of respondent No.2 – Mani Ram and it was reported by FSL, Madhuban that alleged affidavit and receipt did not bear the signature of respondent No.2 – Mani Ram.

12. In the face of aforesaid circumstances, the Police had placed

CRM-M-29984 of 2015

respondent No.2 in column No.2 of the challan. Although the other accused challaned by the Police were charge-sheeted by the Court and they faced trial but at no point of time, either the prosecution or the complainant moved any application under Section 319 Cr.P.C to summon respondent No.2. It is the Magistrate, who at its own summoned respondent No.2 by exercising his power under Section 319 Cr.P.C.

13. Contention of the petitioner that summoning order has been set aside without serving notice to the State or to the complainant, is devoid of any merit because State was prosecuting the case and it never moved an application under Section 319 Cr.P.C as is admitted even in its reply to this petition. As noticed above, even the petitioner – complainant had not moved any such application. In the circumstances, no notice was required to be given to the complainant before hearing the revision filed by respondent No.2.

14. As the evidence before the Court was not of the standard of more than prima-facie case, therefore, learned Additional Sessions Judge did not commit any error in setting aside the summoning order passed by Ld. Magistrate. As such, holding present petition to be devoid of any merit, the same is hereby dismissed.

February 06, 2023
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(DEEPAK GUPTA)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No