

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

228-2

CRM-M-33201-2018 (O&M)

Date of decision: 15.02.2023

Sushma Anand

.....Petitioner

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Mukesh Mehra, Advocate
for the petitioner.

Mr. Vinay Kumar Gupta, AAG, Punjab
for respondent No.1-State.

Mr. J.S. Dadwal, Advocate
for respondent No.2.

None for respondents No.4 to 6.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner is seeking quashing of order dated 16.05.2018 passed by learned Additional Sessions Judge, Kapurthala (Annexure P-5) vide which the order dated 15.07.2017 passed by learned Chief Judicial Magistrate, Kapurthala was set aside and a prayer for summoning respondent No.2 to face trial as an additional accused was declined.

Learned counsel appearing for the petitioner contends that the learned revisional Court without appreciating the evidence in its right perspective gravely erred while passing the impugned order. It was submitted that the petitioner while stepping into the witness box categorically deposed that it was respondent No.2 who induced her to invest money in the company being run by accused Rashmi Singh and Inderjit Singh. Not only this, respondent No.2 also assured the

petitioner that in case accused Rashmi Singh and Inderjit Singh failed to pay the assured amount, he would indemnify the petitioner qua the same.

Per contra, learned counsel appearing for respondent No.2 while controverting the submissions made by the counsel opposite, has submitted that since the powers under Section 319 of the Cr.P.C. are extraordinary powers they cannot be exercised in a casual manner and a great deal of circumspection needs to be exercised while summoning a person as an additional accused under Section 319 of the Cr.P.C. He submits that the order passed by the revisional Court is a well reasoned one and does not warrant any interference.

I have heard learned counsel for the parties and perused the relevant material on record.

Before proceeding further, it would be apposite to reproduce Section 319 of the Cr.P.C. which deals with powers to proceed against other persons appearing to be guilty of offence and 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) 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 subsection (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."

On a bare reading of the above provisions of Section 319 of the Cr.P.C., there can be no doubt, that a duty is cast upon the Court to bring all such persons who prima facie appear to have committed an offence, to justice. In other words, the object and purpose of Section 319 Cr.P.C. is to ensure that any one who prima facie appears to be guilty on the basis of evidence led does not escape trial in relation to that guilt including any person who may have also been dropped by the police during investigation and declared innocent.

The Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab, (Constitution Bench) : 2014(3) SCC 92***, while dealing with the scope of Section 319 Cr.P.C., has observed as under : -

"12. Section 319 Cr.P.C. springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr.P.C.

It is the duty of the Court to do justice by punishing the real culprit. 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. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 Cr.P.C.?

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15. *Section 319 Cr.P.C. allows the court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial. He can either be a person named in Column 2 of the chargesheet filed under Section 173 Cr.P.C. or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence.*

16. *The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the court to give full effect to the words used by the legislature so as to encompass any situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scot free by being not arraigned in the trial in spite of possibility of his complicity which can be gathered from the documents presented by the prosecution.*

17. *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. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence."*

Adverting to the case in hand, the petitioner in her deposition before the Trial court alleged that respondent No.2 had induced her to invest her money in the company of accused Rashmi Singh and Inderjit Singh and still further he had assured her that in case both accused Rashmi Singh and Inderjit Singh failed to pay the assured sum of money, he would compensate her for the same. Apart from the aforesaid, no other material has been brought to the notice of this Court either in the FIR in question or in her deposition before the Trial Court

from which the complicity of respondent No.2 could be discerned. It is not even the case of the petitioner that respondent No.2 had been ever handed over any money by her or he had received any money on behalf of the co-accused Rashmi Singh and Inderjit Singh who were already facing trial or even that he was in any manner a beneficiary of the money invested by the petitioner in the company of Rashmi Singh and Inderjit Singh.

In the above facts and circumstances, and on a minute perusal of the evidence led and other material on record, learned counsel for the petitioner has failed to satisfy this Court qua any error or illegality in the impugned order.

Accordingly, the instant petition being devoid of any merit stands dismissed.

15.02.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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