

CRM-M-43977-2016

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

CRM-M-43977-2016

Date of Decision:-27.02.2023

Sukhjit Kaur & Anr.

.....Petitioners.

Versus

State of Punjab & Anr.

.....Respondents.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. PKS Phoolka, Advocate for the Petitioners.

Mr. Kirat Singh Sidhu, Deputy Advocate General, Punjab.

Mr. P.S. Brar, Advocate for the respondent no.2.

JASJIT SINGH BEDI, J.(ORAL)

The prayer in the petition under Section 482 Cr.PC is for quashing of the order dated 14.09.2016 (Annexure P-2) passed by CJM, Bathinda summoning the petitioners under Section 319 Cr.PC in case FIR No.121 dated 17.7.2014 under Section 411, 420, 465, 467, 468, 471, 120-B IPC P.S. Civil Lines, Bathinda, the order dated 12.10.2016 (Annexure P-4) passed by Additional Sessions Judge, Bathinda whereby the revision petition filed by the petitioners against the order dated 14.09.2016 has been dismissed.

2. The brief facts of the case are that a complaint was submitted at the instance of the complainant/respondent no.2 Krishan Kumar @ Krishan son of Sh. Karnail Singh (hereinafter referred to as respondent no.2) against

Mann Singh son of Sadhu Singh, Sukhjit Kaur wife of Sh. Suba Singh and Suba Singh son of Sh. Kaka Singh (petitioners no.1 & 2) along with the persons who had impersonated the original Suba Singh and Sukhjit Kaur. As per the allegations, the respondent no.2 wanted to purchase a property belonging to the petitioners for which he approached Maan Singh who arranged a meeting with Sukhjit Kaur and her husband Suba Singh and to ensure the proper identity of Sukhjit Kaur, Maan Singh handed over a photocopy of a ration card to the complainant showing the photograph of Sukhjit Kaur and Suba Singh. The agreement to sell was executed between Sukhjit Kaur who signed as a vendor, Maan Singh who signed as a witness and complainant who signed as a vendee on 31.08.2012. A sum of Rs.3 lacs was handed over in cash against the agreed sale consideration of Rs.12 lacs. The lady whose photograph was found pasted on the ration card actually executed the agreement to sell calling herself Sukhjit Kaur. Thereafter the complainant came to know that the plot in question was not in the ownership of the impersonators Sukhjit Kaur and Suba Singh but was in the ownership of the present petitioners. He however, marked his presence in the office of the Sub Registrar assuming that Sukhjit Kaur would come and execute the sale deed but she did not come forth. He also got to know that Maan Singh, the present petitioners and the fictitious Sukhjit Kaur and Suba Singh whose photographs was pasted on the photocopy of the ration card had formed a gang to cheat people. Therefore, the petitioners (actual) Sukhjit Kaur and Suba Singh in connivance with the impersonator Sukhjit Kaur and Suba Singh and the property dealer Maan Singh cheated him of Rs.3 lacs and did not execute the sale deed. The copy of the FIR No.121 dated 17.7.2014 under Section 411, 420, 465, 467, 468, 471, 120-B IPC P.S.

Civil Lines, Bathinda is attached as Annexure P-5 to the petition.

3. After a detailed investigation, the petitioners were exonerated and a report under Section 173 Cr.PC was presented against Maan Singh alone. During the course of the Trial, the statement of the respondent no.2 Krishan Kumar was recorded as PW-2. Thereafter an application was moved under Section 319 Cr.PC to summon the petitioners as additional accused.

4. The copy of the application dated 8.9.2016 is attached as Annexure P-1. Based on the said application the petitioners were ordered to be summoned by the court of CJM, Bathinda vide order dated 14.09.2016. A copy of the said order is attached as Annexure P-2.

5. The petitioners filed a revision petition on 04.10.2016 (P-3). The aforementioned revision petition came to be dismissed by the court of Additional Sessions Judge, Bathinda vide order dated 12.10.2016.

6. The aforesaid orders are under challenge before this Court.

7. The Counsel for the petitioners contends that no specific role or averment has been made qua the present petitioners who are the actual owners of the property. However, undoubtedly, a specific role has been attributed to the impersonators and Maan Singh. He contends that the fake ration card of the petitioners provided by Maan Singh was actually containing the photographs of the impersonators. The person who signed the agreement to sell as a vendor, namely the fictitious Sukhjit Kaur was the same person whose photograph was available on the ration card. Similarly Maan Singh who had signed the agreement as a witness was also shown on the fake ration card. Therefore, there was absolutely no evidence so far as the present petitioners were concerned. In fact, they were the aggrieved

persons as their land had been sold by Maan Singh and their impersonators i.e. fictitious Sukhjit Kaur and Suba Singh to the complainant. He contends that the impugned order passed by the Magistrate (Annexure P-2) and the order in revision (Annexure P-4) are non speaking in as much as nothing specific has been pointed out as to why the petitioners ought to be summoned and what admissible evidence was there *prima facie* inculcating them. In addition it is his contention that the cross examination of respondent no.2 Krishan would reveal that the papers of the property given to him by Sukhjit Kaur at the time of the execution of the agreement to sell was not by the original Sukhjit Kaur but by someone else. He also admits that it was the petitioner Sukhjit Kaur who had put her thumb impressions on the agreement to sell and also received the sale proceeds. The Sukhjit Kaur present in Court was not the one who had received the money from him. He has thereafter clarified that the money was in fact paid to Maan Singh (accused facing trial). He also states that Suba Singh was also not present at that time.

8. It is thus the case of the petitioners that there was absolutely no evidence to summon them as additional accused under Section 319 Cr.PC. They were aggrieved persons and could not be ordered to be summoned on conjectures, surmises and suppositions.

9. The Counsel for the State along with the Counsel for the Complainant contended that even though the petitioners were placed in column no.2, there was sufficient evidence to summon them to face trial along with accused already facing trial, namely, Maan Singh. Therefore it was their contention that there was no illegality in the impugned orders and the present petition was liable to be dismissed.

10. I have heard learned Counsel for the parties.
11. Before proceeding further it would be apposite to refer to the provisions of Section 319 Cr.PC and the same is reproduced hereunder:-

“ **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.

12. The Hon'ble Supreme Court in **Michael Machado & another Versus Central Bureau of Investigation & another, 2000(2) R.C.R. (Criminal) 75**, 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.”

[Emphasis supplied]

13. In the present case, a perusal of the FIR would reveal no specific averment qua the petitioners. In fact quite to the contrary, it is the case of the complainant that the documents such as the fictitious ration card contained the photographs of the impersonator Sukhjit Kaur and Suba Singh. Similarly, in the deposition in court no specific role has been attributed to the petitioners. On the contrary in the cross examination the complainant has admitted that it was the fictitious Sukhjit Kaur who had signed the agreement to sell and also received the sale proceeds. The photograph on the ration card of the said fictitious Sukhjit Kaur matched the Sukhjit Kaur at the spot. The original Sukhjit Kaur and Suba Singh-petitioners were not present at the time of the execution of the agreement to sell. Therefore, apparently so far as the petitioners are concerned they being

the owners of the property are actually in the nature of aggrieved persons and, therefore, Suba Singh had initially been cited as a prosecution witnesses.

14. In view of the aforementioned discussion there is sufficient force in the arguments raised by the petitioners. Therefore, no case for their summoning as additional accused is made out.

15. Resultantly, the present petition is allowed and order 14.09.2016 (Annexure P-2) passed by CJM, Bathinda summoning the petitioners under Section 319 Cr.PC in case FIR No.121 dated 17.7.2014 under Section 411, 420, 465, 467, 468, 471, 120-B IPC P.S. Civil Lines, Bathinda, the order in revision dated 12.10.2016 (Annexure P-4) passed by Additional Sessions Judge, Bathinda and all subsequent proceedings therefrom are hereby quashed.

(JASJIT SINGH BEDI)
JUDGE

February 27, 2023

Vinay

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