

CRM-M-50410-2018

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2023:PHHC:166340

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

CRM-M-50410-2018

Date of decision : 11.04.2023

Surjan Singh

...Petitioner

Vs.

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Lajwant Singh Virk, Advocate
for the petitioner.
Mr. Gurdarshan Singh Sidhu, AAG, Punjab.
Mr. Sunny K.Singla, Advocate
for respondent No.2.

DEEPAK MANCHANDA, J.(Oral)

By way of present petition filed under Section 482 Cr.P.C, the petitioner is seeking quashing of summoning order dated 01.08.2018 (Annexure P-3) passed by Judicial Magistrate First Class, Amloh, whereby the petitioner has been summoned under Section 319 Cr.P.C as an accused to face trial under Section 471 IPC in case FIR No.95 dated 14.09.2013 (Annexure P-1) registered under Sections 420, 465, 468 and 471 IPC at Police Station Amloh, District Fatehgarh Sahib.

As per the case of the prosecution, complainant, namely, Paramjeet Singh Rosha got registered a FIR No.95 dated 14.09.2013 under Sections 420, 465, 468 and 471 IPC at Police Station, Amloh, wherein it has been alleged that one Jagroop Singh son of Baldev Krishan has prepared a false certificate of matriculation and has shown his name as Rakesh Kumar son of Baldev Krishan. He claimed his date of birth as 11.05.1973 instead of 21.05.1975 and obtained government service in department of Irrigation

Punjab. For that offence, an FIR No. 126 dated 08.11.2012 had already been registered under Sections 419 and 420 IPC at Police Station Amloh, District Fatehgarh Sahib.

Learned counsel for the petitioner contends that petitioner has been named in the present FIR being the Numberdar, who was the attesting witness on the self declaration of one of the accused, namely, Rakesh Kumar. He further contends that the said accused-Rakesh Kumar moved an application to the higher authorities and inquiry on the same was conducted by DSP (D) Fatehgarh Sahib, who submitted his report dated 26.02.2014 before SSP, Fatehgarh Sahib. The report was accepted by SSP Fatehgarh Sahib on 13.04.2014 (Annexure P-2). After the said inquiry report, four persons including the petitioner were kept in column No.2 and the challan was presented in the Court only against three persons/accused. He submits that thereafter an application under Section 319 Cr.P.C for summoning of aforesaid four persons, including the petitioner as an accused was filed by the complainant and the trial Court vide impugned order dated 01.08.2018 without considering the inquiry report (Annexure P-2), which was duly accepted by SSP Fatehgarh Sahib and summoned the petitioner to face trial under Section 471 IPC. He submits that in the present FIR, petitioner has no role and no offence is made out against the petitioner and trial Court has wrongly summoned him under Section 319 Cr.P.C without considering the aforesaid fact. He argued that only on the basis of the statement of complainant, the petitioner cannot be summoned under Section 319 Cr.P.C., when he has already been declared innocent by the police, therefore, he prays for setting aside the impugned order dated 01.08.2018 (Annexure P-3). In support of his

contention, learned counsel for the petitioner has placed reliance upon the order passed by the Hon'ble Supreme Court in "***Michael Machado and Anr. Vs. Central Bureau of Investigation and Another***", 2000 (2) R.C.R.(Criminal) 75 and another judgment passed by this Court rendered in "***Hukam Chand and another Vs. State of Haryana and another***", 2007 (3) R.C.R.(Criminal).

Learned counsel for the respondent-State while referring to the reply dated 14.11.2019 filed by way of affidavit of Sukhwinder Singh (PPS) Deputy Superintendent of Police, Sub Division Amloh, District Fatehgarh Sahib, although does not dispute that earlier petitioner was declared innocent during investigation and the same stands completed, and report under Section 173 Cr.P.C has already been presented before the trial Court on 28.07.2014, but submits that impugned order is valid as per law and is speaking one and as such present petition deserves dismissal.

Learned counsel for respondent No.2/complainant submits that present petition under Section 482 Cr.P.C is not maintainable as the remedy against the summoning order passed under Section 319 Cr.P.C is available with the petitioner by filing a revision petition before the revisional Court and present petition cannot be entertained against the said impugned order.

I have heard the learned counsel for the parties and have gone through the case file.

Before adjudicating the issue, the objection raised by learned counsel for the respondent No.2/complainant with regard to maintainability of the present petition under Section 482 Cr.P.C is to be dealt with and same is answered that the argument raised by the learned counsel for the respondent No.2/complainant is not tenable in view of the settled proposition of law in

case titled as “*Prabhu Chawla Vs. State of Rajasthan & Another*”, 2016 (4) *R.C.R.(Criminal)* 270, where the Apex Court had dealt with the similar issue and held that the inherent powers under Section 482 of Cr.P.C cannot be limited as the provision of revision attracted against the impugned summoning order and mere availability of alternative remedy cannot be a ground to disentitle the relief under Section 482 of Cr.P.C. Accordingly, present petition is maintainable under Section 482 of Cr.P.C for quashing of the summoning order dated 01.08.2018.

A perusal of the impugned order dated 01.08.2018 reveals that the trial Court merely on the statement of complainant has summoned the petitioner to face the trial. Though the trial Court noticed that during investigation, the petitioner was found innocent and kept in coloumn No.2, but did not appreciate this aspect and observed that Namberdar hold a responsible post and submits his verification report for elevation of any government official to a government post cannot be said to be under ignorance of so many documents alleged to be forged by the accused for his wrongful gain and mentioned that these facts shall be decided on the merits after the prosecution leads its evidence. Apart from this, no other findings is given in the order dated 01.08.2018. The petitioner is the attesting witness of the documents alleged to be forged and the same is an admitted aspect, but no reasoning has been given that being the attesting witness what is other role of the petitioner based upon which the summoning is done. As per the said order, it is apparent that merely on the recording of the first statement on the same facts where the petitioner has already been exonerated during investigation, there is no fresh material against the petitioner.

Powers under [Section 319](#) of the Code can be invoked in appropriate situations. This section is extracted below:

“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 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.

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.

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.

The Court was to record its satisfaction to the extent that the evidence, if goes un-rebutted, would lead to conviction. In the instant case, the trial Court has not discussed or recorded its satisfaction to that extent. Mere reproduction of the FIR by the complainant in his statement recorded in the Court would not be enough to summon the person to face trial under Section 319 Cr.P.C. Further, the trial Court should have examined the reasonable probability against the newly brought accused i.e. petitioner ending in conviction for the offence concerned, whereas in the present case, as pointed out above, the petitioner has already been exonerated by the police authorities and there is no such fresh material on record presented against the petitioner, apart from the supplementary statement got recorded by the complainant.

In view of the above, present petition is allowed and the impugned order dated 01.08.2018 (Annexure P-3) is set aside.

		(DEEPAK MANCHANDA)	
		JUDGE	
11.04.2023	Whether speaking/reasoned :	Yes	No
sapna/vanita	Whether Reportable :	Yes	No