

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

115.

CRM-M No.27004 of 2023 (O&M)

Date of Decision:30.11.2023

Gurmeet Singh

...Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Pawan Kumar, Senior Advocate with
Ms. Vidushi Kumar, Advocate
Mr. Surya Kumar, Advocate
for the petitioner.

Ms. Navreet Kaur Barnala, AAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The petitioner has approached this Court under Section 482 Cr.P.C. challenging the order dated 13.01.2023 (Annexure P-11) passed by the learned Judicial Magistrate 1st Class, Amloh whereby the application of the petitioner under Section 319 Cr.P.C. seeking summoning of respondents No.2 and 3 as additional accused in FIR No.118 dated 26.09.2015 registered under Section 420 IPC at Police Station Amloh, District Fatehgarh Sahib was dismissed as well as the order dated 17.03.2023 (Annexure P-12) passed by the learned Sessions Judge, Fatehgarh Sahib vide which the order dated 13.01.2023 has been affirmed in the revision petition preferred by the petitioner against the said order.

2. In brief, the facts are that the petitioner-complainant made a complaint to the police that he and his brother Bawa Singh were holding total *raqba* of 26 kanals 7 marlas situated at Village Kapoorgarh, out of which 13 kanals and 8 ½

marlas was in his possession. However, his brother Bawa Singh gave bribe to Kulbhushan Kumar, Kanungo (presently Naib Tehsildar Dhanaula) and got transferred girdawari of 12 kanals 5 marlas of land in his name vide Farad Badar No.3 dated 08.10.2009 in violation of memo dated 02.06.2004 issued by the Department of Revenue and Rehabilitation, Government of Punjab (Land Revenue Branch). Based on the said complaint, FIR No.118 dated 26.09.2015 under Sections 420 IPC was registered against Kulbhushan Kumar, Kanungo (present Naib Tehsildar, Dhanaula), Karamjit Singh, Patwari and Bawa Singh. However, after investigation, final report under Section 173 Cr.P.C. was filed against Bawa Singh only whereas Kulbhushan Kumar and Karamjit Singh were declared innocent. An application was filed by the complainant under Section 319 Cr.P.C. for summoning Kulbhushan Kumar and Karamjit Singh, which stood dismissed vide order dated 13.01.2023 passed by the learned Judicial Magistrate 1st Class, Amloh and the revision petition preferred against the said order was also dismissed by the Revisional Court vide order dated 17.03.2023.

3. Mr. Pawan Kumar, learned Senior Counsel assisted by Ms. Vidushi Kumar and Mr. Surya Kumar, Advocates submits that respondents No.2 and 3 in collusion with accused Bawa Singh had changed the entry in the *khasra girdawari* for undue gain by misusing their official power, which caused immense hardship and harassment to the petitioner. It is further submitted that present FIR was registered on the complaint made by the petitioner against Bawa Singh, Kulbhushan Kumar and Karamjit Singh after conducting a thorough investigation by the police authorities wherein a *prima facie* case was made out against them. Thereafter, an investigation in the said FIR was conducted by the Economic Offences Wing (Investigation), District Fatehgarh Sahib and report dated 15.02.2016 was submitted by the Incharge, Economic

Offence Wing-2, who without any rhyme and reason declared respondents No.2 and 3 as innocent. It is further contended that a person, who was not named in the FIR or a person though named in the FIR but has not been charge-sheeted can be summoned under Section 319 Cr.P.C. In support of his contentions, he relies upon the judgments rendered by the Hon'ble Supreme Court in *Hardeep Singh Vs. State of Punjab and others (2014) 3 SCC 92* and *Sandeep Kumar Vs. The State of Haryana and another* passed in Criminal Appeal No.2195 of 2023 decided on 28.07.2023 and the judgment passed by a Coordinate Bench of this Court in CRM-M No.49836 of 2017 decided on 06.03.2020 titled as *Gurmukh Singh and another Vs. State of Punjab and another*.

4. Having heard learned counsel for the petitioner and after perusing the case file, this Court does not find any merit in the contentions raised by the learned Senior Counsel appearing for the petitioner. As far as respondent No.3 is concerned, he was neither named in the FIR nor named by the complainant in his statement made in the trial Court as PW-2. Admittedly, the owner of the land was provincial government and the villagers are only in possession of the same. The *khasra girdawari* shows the cultivating possession of the land by tiller and the capacity in which he is cultivating it. Respondent No.2 in his official capacity when visited at the spot and conducted an enquiry, he was told by the chowkidar and numberdar of the village that the crop in the land in question was sown by Bawa Singh and it was further intimated by the respectables of the village that the petitioner did not come to the village since last many years. Therefore, respondent No.2 acted in his official capacity and the allegations levelled against him are vague and not specific that he took bribe from Bawa Singh for entering the *khasra girdawari* in his name beyond

his entitlement. However, no proof of any such transaction was produced before the trial Court. In the absence of any material available during the course of trial, courts ought to refrain themselves from exercising its discretionary and extraordinary power under Section 319 Cr.P.C. The Constitution Bench of the Hon'ble Supreme of India in ***Hardeep Singh Vs. State of Punjab (2014) 3 SCC 92*** has held that the power under Section 319 CR.P.C. is a discretionary and extraordinary power. It is to be exercised only on the basis of the material available before the Court during a trial and not because the Magistrate or the Sessions Judge is of the opinion that some other accused/person may also be guilty of committing that offence.

5. The trial Court must evaluate the material against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 Cr.P.C. ought not to be invoked. A two Judge Bench of the Hon'ble Supreme Court in ***Juhru and others Vs. Karim and another (2023) 5 SCC 406*** speaking through Justice Surya Kant, while relying upon ***Hardeep Singh's case*** (supra) has held as under:-

“16. It is, thus, manifested from a conjoint reading of the cited decision that power of summoning under Section 319 CrPC is not to be exercised routinely and the existence of more than prima facie case is sine qua non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 CrPC, and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 CrPC ought not to be invoked.

6. The FIR is not an encyclopedia and mere statement of the complainant reiterating the contents of FIR/complaint not substantiated by any credible material, cannot be a ground to invoke the discretionary and extraordinary power of the Court to summon an additional accused under Section 319 Cr.P.C. The judgments relied upon by the learned Senior Counsel appearing for the petitioner are distinguishable from the facts and circumstances of the present case.

7. In view of the aforesaid facts and circumstances, this Court does not find any illegality or perversity in the impugned orders dated 13.01.2023 and 17.03.2023 passed by the learned Judicial Magistrate 1st Class, Amloh and learned Sessions Judge, Fatehgarh Sahib respectively and the same are upheld. Resultantly, the instant petition stands dismissed.

(HARPREET SINGH BRAR)
JUDGE

November 30, 2023
Pankaj*

Whether speaking/reasoned	Yes
Whether reportable	Yes