

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.3360 of 2015 (O&M)
Date of Decision: May 26, 2023

Swaran Singh		...Petitioner
	Versus	
State of Punjab		...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Preetinder Singh Ahluwalia, Advocate for the petitioner.

Mr. R.S. Khaira, DAG, Punjab.

Mr. N.S. Diwana, Advocate for the complainant.

DEEPAK GUPTA, J.

CRM No.29436 of 2015

This is an application for condonation of delay of 15 days in filing the appeal.

Heard.

For the reasons mentioned in the application, the same is allowed. Delay of 15 days in filing the appeal is condoned.

CRR No.3360 of 2015

During trial of a case arising out of FIR No.154 dated 07.10.2013 registered at Police Station Sadar Kharar, District SAS Nagar (Mohali), under Sections 306, 420, 467, 471, 120-B, 465, 468, 419 IPC, petitioner and two others have been summoned under Section 319 Cr.P.C to face trial along with already challaned accused vide impugned order dated 25.05.2015 passed by learned Additional Sessions Judge, SAS Nagar, Mohali, and, thereafter petitioner and two others have been charge-sheeted vide order dated 31.07.2015 (Annexure P.4). Against both these orders, this

revision under Section 401 read with Section 482 of the Criminal Procedure has been preferred.

2. FIR in question (Annexure P.1) was recorded on the statement of Smt. Harwinder Kaur, as per which, her husband Charan Singh was owner of 6 biswa plot situated on Singhpura Road, Kurali. Since her husband Charan Singh made up his mind to sell the said plot, he handed over photocopy of the registry thereof to one Kesar Singh son of Harchand Singh. It was alleged that said Kesar Singh, in connivance with his accomplices executed various agreements to sell the property to different persons, due to which the property dealers started coming to their house and threatening them to deliver the possession. Her husband lost mental balance telling that Kesar Singh had snatched all the earnings of his life. It was further alleged that on 30.09.2013, Kesar Singh forced Charan Singh to sign a Power of Attorney and blank papers of vakalatnama but due to intervention of Sarpanch Ravinder Singh, who was present there, Charan Singh did not sign the same. However, later on Kesar Singh filled the vakalatnama and forcibly got it signed from her husband. It was alleged that in this way, Kesar Singh, in connivance with his accomplices had tried to misappropriate their plot and on account of all these circumstances, her husband committed suicide on 07.10.2013. Prayer was made to take action against Kesar Singh and his accomplices.

3. Initially, FIR was registered under Sections 306/120-B IPC. During investigation, Kesar Singh was arrested and based on his disclosure statement, one more accused Jasvir Singh son of Karam Singh was arrested. Sections 419, 420, 465, 467, 468 and 471 IPC were added

in the case. Statements of witnesses were recorded under Section 161 Cr.P.C. It was found that different agreements dated 24.06.2011 in favour of Swaran Singh (petitioner); dated 05.08.2011 in favour of Gurpal Singh; and dated 03.02.2012 in favour of Nikka Singh had been executed. The Police concluded that no case was made out against said Swaran Singh (petitioner), Gurpal Singh and Nikka Singh and so they were placed in column No.2 of the challan; whereas final report under Section 173 Cr.P.C was filed to prosecute Kesar Singh and Jasvir Singh for offences under Sections 306, 120-B, 419, 420, 465, 467, 468 and 471 IPC.

4. During trial against Kesar Singh and Jasvir Singh, Smt. Harwinder Case, complainant of the case was examined as PW1. In her testimony (Annexure P.3), reiterating the FIR version, she deposed that the accused i.e. Kesar Singh along with different property dealers, namely, Jasvir Singh, Gurpal Singh, Nikka Singh and Swaran Singh visited their house and threatened them to register the sale deed and further threatened them to deliver possession of the plot.

5. After recording the statement of PW1 Smt. Harwinder Kaur, prosecution moved an application under Section 319 Cr.P.C, which was allowed by the trial Court vide impugned order dated 25.05.2015, summoning petitioner Swaran Singh, besides Gurpal Singh and Nikka Singh. All the five accused i.e. initially challaned Kesar Singh and Jasvir Singh; and petitioner along with Gurpal Singh and Nikka Singh were then charge-sheeted on 31.07.2015 under Sections 306, 120B, 420/120B, 419/120B, 465/120B, 467/120B, 468/120B and 471/120B IPC.

6. Challenging the afore-said orders, it is contended by learned

counsel that the petitioner was neither named in the FIR nor any overt act was attributed to him. It was further contended that complainant has leveled general, vague and omnibus allegations in an attempt to widen the net by roping in three persons including the petitioner. Still further, it is contended that the petitioner in fact is victim of the crime as he along with other partners has been duped, as principal accused had entered into agreement to sell with them. The agreement to sell with the petitioner was executed on 24.06.2011 and thus, it is with him and two others, that fraud was apparently played and it is for this reason that they were exonerated by the Investigating Agency. It is further the contention of learned counsel that while exercising its powers under Section 319 Cr.P.C., the learned trial Court did not advert to the ratio of law laid down by Hon'ble Supreme Court, as per which summoning of petitioner as an additional accused can be done only in strong and compelling circumstances and thus, parameters of law have not been followed.

7. Learned counsel for the petitioner has also brought to the notice of this Court that after charge-sheeting the accused including the petitioner, prosecution has already concluded its evidence by now and thus, case is at the fag-end.

8. Learned counsel for the complainant, on the other hand, has supported the impugned order and submitted that after appreciating the record, petitioner and two others have been rightly summoned. Though learned State Counsel conceded that Investigating Agency had exonerated the petitioner and two others but he too supported the impugned order of the trial Court.

9. I have considered submissions of both the sides and have

appraised the record. In ***Jogendra Yadav and Others Vs. State of Bihar and Another, 2015(3) Law Herald 2514***, it was held by Hon'ble Supreme Court that a person who is summoned as additional accused under Section 319 Cr.P.C, cannot seek discharge under Section 227 Cr.P.C.

10. When this proposition of law was confronted to learned counsel for the petitioner at the motion stage, learned counsel referred to ***State of Punjab Vs. Davinder Pal Singh Bhullar and others, 2012(1) RCR (Criminal) 126***, which permitted judicial review of the order under Section 319 Cr.P.C and charges framed on the basis of the summoning order by applying the legal maxim "*sublato fundamento cadit opus*", which means that foundation being removed, structure/ work falls. Since the petitioner had opted to challenge the order passed under Section 319 Cr.P.C whereas the order framing charges was a consequential step to the summoning, therefore, this Court vide order dated 15.09.2015 had held the petition to be maintainable in view of ***Davinder Pal Singh Bhullar's case (supra)***.

11. Coming to the impugned order passed by the trial Court under Section 319 Cr.P.C, no doubt that in the FIR, petitioner is neither named nor any overt act is attributed to him, but at the same time, without naming the petitioner, it has been alleged that Kesar Singh and his accomplices, had executed the agreements to sell with different persons, who had started coming to the house of the deceased and threatening him to deliver the possession, which made him lose his mental balance and compelled him to commit suicide. During her testimony as PW1, complainant Harwinder Kaur has specifically named the petitioner

Swaran Singh, apart from Jasvir Singh, Gurpal Singh and Nikka Singh, who along with Kesar Singh had started visiting the house of deceased and threatening him to register the sale deed in their name and to deliver the possession of the plot.

12. It is important to note that apart from Section 306 IPC, petitioner along with two others, have also been summoned for offences under Sections 419, 420, 465, 467, 468, 471 IPC and after appraising the evidence on record, including the evidence as collected during investigation, the trial Court not only charge-sheeted the petitioner and others under the provisions of Section 306 IPC but also under Section 120-B IPC and under Sections 419, 420, 465, 467, 468 and 471 IPC read with Section 120B IPC. The evidence collected during investigation, include the three agreement to sell, one of them being dated 24.06.2011 in favour of petitioner Swaran Singh. It is yet to be proved during trial as to whether that agreement to sell was the forged agreement or whether the same was procured under compulsion from the deceased or whether it was a genuine agreement or whether the said agreement was one of the factor on which basis, petitioner along with others was visiting the house of the deceased and compelling him to execute the sale deed and deliver possession. As has been informed to this Court, Prosecution has already concluded its evidence and thus, trial is at the fag-end of the case.

13. 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.**

14. 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."

15. 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.**

16. In the light of legal position as afore-said and applying the same to facts and circumstances of the present case and also keeping in view the present position that trial has reached the stage of fag-end inasmuch as prosecution has already concluded its evidence, this Court does not find any reason to interfere in any of the impugned orders i.e. order summoning the petitioner under Section 319 Cr.P.C and the order charge-sheeting the petitioner. As such, the present revision is hereby dismissed.

May 26, 2023
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(DEEPAK GUPTA)
JUDGE

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