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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: July 28, 2023

Shiv Pal Singh

....Petitioner

versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Deepak Verma, Advocate for petitioner.

Ms. Guramrit Kaur, DAG Punjab.

Mr. Sidhant Mehra, Advocate for

Mr. Arnav Sood, Advocate for respondents No.2 and 3.

ARUN MONGA, J. (ORAL)

Petition has been filed under Section 482 of Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') for quashing impugned order dated 09.05.2019 (Annexure P-11) passed by learned Additional Sessions Judge, Hoshiarpur, in revision filed by private-respondents, whereby order dated 27.10.2016 (Annexure P-5) summoning private-respondent No.2 and 3 as additional accused under Section 319 Cr.P.C. to face trial, was set aside.

2. Per prosecution version, petitioner/ complainant-Shiv Pal Singh moved a complaint dated 23.7.2014 to SSP, Hoshiarpur alleging that Bikkar Singh and Satnam Kaur residents of Village Bhamian, Tehsil Garhshankar, District Hoshiarpur had taken Rs.40 Lakh from him regarding sale of land. They claimed that they had 9½ Acres of land at Village Attowal and plot of 200 square yards at Chandigarh. Bikkar Singh had shown his land at Village Bhamian to the complainant and agreed to sell the same @ Rs.25 lakh per Killa. However, Bikkar Singh and Satnam Kaur used to put off the matter when asked to execute the sale deed. Complainant, when he came to know that Satnam Kaur had no land at Village Attowal nor they have any plot, he asked Bikkar Singh and Satnam Singh to give him the residential Kothi which they had purchased with the

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amount taken from him. The complainant had paid the amount for purchase of Kothi to Deepak Kumar and Rajwant Kaur (respondents No.2 and 3 herein) by cheque. Bikkar Singh and Satnam Kaur agreed to return the amount by 10.7.2014 and undertook that if they failed to return the amount, they will give the Kothi to the complainant for Rs.23 Lakh and for the remaining amount Bikkar Singh will give his land at Village Bhamian @ Rs.25 Lakh per Killa. However, they did not fulfill their promise.

2.1. Later on, complainant further gained knowledge that Bikkar Singh and Satnam Kaur were selling the Kothi to some third person and he contacted respondent No.2-Deepak Kumar who assured that only Rs.50,000/- out of sale consideration of Kothi will be given to Satnam Kaur and remaining amount will be paid to the complainant. However, later on, Deepak Kumar in connivance with Satnam Kaur helped Satnam Kaur and Bikkar Singh to run away from their house. An FIR under Section 420 IPC was registered in this regard.

3. Learned counsel for petitioner contends that an application for summoning private-respondents No.2 and 3, namely, Deepak Kumar and Rajwant Kaur as co-accused to face the trial was moved, which was allowed vide order dated 27.10.2016 (Annexure P-5) by learned trial Court. Petitioner had also filed a civil suit (Annexure P-6) for recovery of Rs.57,93,600/- against accused persons, namely, Bikkar Singh and Satnam Kaur and respondents No.2 and 3 herein, which was disposed of vide order dated 16.10.2018 directing defendants/ accused not to alienate the property in question. He further submits that vide order dated 01.08.2017 (Annexure P-9), learned revisional Court set aside the order dated 27.10.2016 whereby summoning of private-respondents No.2 and 3 was ordered. Aggrieved, petitioner preferred a quashing petition bearing CRM-M-35272-2017 before this Court, which was disposed of vide order dated 11.10.2018 (Annexure P-10) while remanding the matter to revisional Court below to decide afresh after giving an opportunity to the petitioner. However, again vide impugned order dated 09.05.2019 (Annexure P-11), learned revisional Court again allowed the revision petition of private-respondents No.2 and 3 while setting aside the order of learned trial Court.

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4. On the other hand, learned State counsel as well as learned counsel for respondents No.2 and 3 oppose the petition and support the impugned order passed by learned revisional Court whereby order dated 27.10.2016 passed by learned trial Court summoning respondents No.2 and 3 was set aside. They state that learned revisional Court has passed the order based on correct appreciation of evidence and record available and deserves no interference by this Court.

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

6. This Court had an occasion to deal with certain principles of Section 319 Cr.P.C. whereby some observations were made regarding exercise of power under Section 319 Cr. P.C. Reference may be had to my judgment rendered in **Kamaljit Singh versus State of Punjab and others**¹ wherein following observations were made:

“6. No doubt, Section 319 of the Cr. P.C. allows a court to add any person, who is not an accused before the court, as an accused in an ongoing trial if it appears from the evidence that such person has committed an offense. However, exercise of said power is governed by certain principles, which, inter alia, are as below:

- i. *Prima facie evidence:* The court must have prima facie evidence against the person sought to be added as an accused, i.e. some material on record which, if unrebutted, could lead to the conclusion that the person has committed the offense.
- ii. *Connection to the offense:* The court must find a clear connection between the person sought to be added and the offense. This connection could be established through witness statements, documentary evidence, or any other relevant material that links the person to the commission of the offense.
- iii. *Judicial discretion:* The power conferred under Section 319 is discretionary and should be exercised judiciously by the court. The court must consider all the facts and circumstances of the case and exercise its discretion based on sound judicial principles.
- iv. *Fair opportunity:* The person sought to be added as an accused should be given a fair opportunity to present their case and defend themselves against the charges.
- v. *Sufficiency of evidence:* The court should assess the sufficiency of evidence against the person sought to be added. The evidence should be substantial and reliable enough to create a strong probability of the person's involvement in the offense.
- vi. *Stage of trial:* The court can exercise its power under Section 319 at any stage of the trial, whether it is during the inquiry, trial, or even after the judgment has been pronounced. However, the power should be exercised cautiously, especially when the trial is at an advanced stage, to ensure fairness and avoid prejudice.

Aforesaid principles ensure that the power under Section 319 is used judiciously and in accordance with the principles of natural justice, while allowing the court to effectively deal with situations where additional persons are found to be involved in the commission of an offense.”

7. Reference may also be had to a Constitution Bench judgment of Apex Court in **Hardeep Singh versus State of Punjab and others**². Scope of section 319 Cr.P.C. for the purpose of summoning additional accused was considered therein and five questions were framed to enunciate the broad principles. Supreme Court has addressed various questions framed by it, as under:

“110. We accordingly sum up our conclusions as follows:

Question Nos. I & III

Q.I What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND

Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused? Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the charge-sheet. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Q.II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not

wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Q. IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No. V

Q.V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh. The matters be placed before the appropriate Bench for final disposal in accordance with law explained hereinabove.”

8. Impugned order dated 09.05.2019 (Annexure P-11) passed by learned

Additional Sessions Judge, Hoshiarpur is *inter alia* premised on the following reasoning:

“10. Perusal of statement of complainant rather shows that Deepak Kumar had promised to intervene in the dispute of complainant with Satnam Kaur and Bikkar Singh. The name of Rajwant Kaur does not figure anywhere in the incident except that complainant has alleged that he has suspicion that Deepak Kumar and Rajwant Kaur had connived with other accused. Even during inquiry no allegations were found to be made out against Deepak Kumar and Rajwant Kaur. The Learned Lower Court after discussing the facts and testimony of the complainant has observed that under Section 319 (1) Cr.P.C where in the course of inquiry or trial of an offence, it appears from the evidence that any person not being accused has committed the offence for which he could be tried together with the accused, the court may proceed against such person. The Learned Lower Court thereafter, went on to hold that from testimony of PW1 Deepak Kumar and Rajwant Kaur appear to have committed the offence and summoned them as co-accused. However, nothing has been discussed as to how the Learned Lower Court reached this conclusion that revisionists appear to have committed the offence. The Learned Lower Court has failed to take into consideration all the facts and documents as discussed above and has ordered to summon the revisionists as co-accused by a totally non speaking order.

11. From the facts, evidence and documents as discussed above, and applying the authorities cited above, no fresh material has come on record except the statement of complainant. The complainant has only reiterated his own version and as discussed earlier, there are no such allegations against the revisionists Deepak Kumar and Rajwant Kaur, so as to hold that more than prima-facie case is made out against them. Thus, mere probabilities of their complicity, is not sufficient to make out case for their summoning under Section 319 Cr.P.C alongwith co-accused. The order of Learned Trial Court is clearly not only illegal but perverse and is not based on correct appreciation of facts, evidence and law applicable thereto. The same is not sustainable and is hereby set aside and accordingly, the revision-petition is allowed and parties are directed to appear before the Learned Trial Court on 24.5.2019. Record of the trial court along with copy of the Judgment be sent back. Revision file be consigned to the record room."

9. On a careful reading of section 319 of the Code of Criminal Procedure, I am of the considered opinion that it would be attracted only and if after submission of final investigation report by the police to the Court, it appears from evidence subsequently recorded in the course of inquiry into and trial of an offence that any person not being the accused has committed any offence for which such person could be tried together with the accused and the court may then proceed against such person for the offence which he appears to have committed. In present case, it cannot be said that this condition is satisfied. The reason is that the accusatory statement against respondents No.2 and 3 Deepak Kumar and his wife Rajwant Kaur made by the petitioner during trial is on the same lines as per his initial version in the complaint/FIR, which was already before the local police when it submitted the challan against Bikkar Singh and his wife Satnam Kaur only. The aforesaid initial version of the petitioner in his complaint/FIR was also before the learned trial Court and would have been considered by it at the time of taking cognizance of the offence and proceeding with the trial against Bikkar Singh and his wife Satnam Kaur only. It cannot, therefore, be said that after the submission of the final investigation report by the police to the Court and during the course of subsequent inquiry into and trial of the offence that any new facts came to light showing that Deepak Kumar and Rajwant Kaur had committed an offence for which they could be tried together with Bikkar Singh and his wife Satnam Kaur.

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10. In the premise, I am of the opinion that impugned order has been passed based on appreciation of facts, evidence and material available on record, as also after correct interpretation of provisions of Section 319 Cr. P.C., which deserves no interference by this Court.
11. As an upshot, the instant revision is dismissed.
12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

July 28, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No