

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

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**CRM-M-9209-2018
Decided on : 09.03.2023**

Krishan Singh

. . . Petitioner

Versus

Kulwinder Singh and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Varun Jain, Advocate
for the petitioner.

AMAN CHAUDHARY, J.

1. The present petition has been filed under Section 482 of Cr.P.C. for setting aside the order dated 02.11.2017, Annexure P-1 passed by the Additional Sessions Judge, Sangrur wherein revision against the order dated 11.07.2016 passed by Sub-Divisional Judicial Magistrate, Moonak, Annexure P-3 has been affirmed vide which the complaint against accused No.1 and 2 and application under Section 319 Cr.P.C. was dismissed by the trial Court.

2. Breviloquently, the facts of the case are that the complainant-petitioner was working as Assistant Lineman in Punjab State Power Corporation Ltd., Lehragaga, District Sangrur. He filed a Complaint No.105 dated 23.10.2012 against the respondents under Sections 420, 467, 468, 471, 474, 500, 193, 189, 120-B of IPC before the Sub-Divisional Judicial Magistrate, Moonak asserting that they used to pressurize him to work according to their wishes and when he refused, they threatened to get him removed from service by falsely implicating him. On 23.06.2011, he received a letter vide which he was ordered to submit a reply within 2 days with respect to the allegations against him that he had illegally shifted the motor of Ram Jas by taking illegal gratification of Rs. 5,000. The above allegations were made against him on the basis of a checking report dated

11.06.2011. Whereas the said Ram Jas had died on 11.02.1995. Infact, one Hari Singh S/o late Ram Jas had impersonated his father and had given an application dated 16.06.2011 to the office of Punjab State Power Corporation Ltd. for shifting the motor on the ground that the same had become non-functional. Accused-respondent Nos.1 and 2 got deposited Rs.25,423/- as the requisite charges which show that no shifting had taken place prior to 16.06.2011 and the checking report was false and fictitious. The petitioner further filed an application under Section 319 of Cr.P.C. for summoning of additional accused-respondent Nos.3 to 7, two of whom were senior Executive Engineers, one retired junior engineer, and two private persons. However, the trial Court issued summons only to Hari Singh-accused-respondent No.3 in the complaint and dismissed the complaint qua accused-respondent Nos.1 and 2 and the above said application vide order dated 11.07.2016.

3. The petitioner dissatisfied, laid an unsuccessful challenge to the order whereby his revision petition came to be dismissed.

4. Learned counsel for the complainant-petitioner would contend that the Sub Divisional Judicial Magistrate, Moonak has committed a grave error while dismissing the complaint qua accused-respondent No.1 and 2, despite there being specific allegation against them that in case he does not work as per their wishes, he would be falsely implicated in some case and got removed from service and with this object in mind, they prepared false and fictitious checking report, on the basis of which, he has been charge sheeted by the department. Even the application filed by him under Section 319 Cr.P.C. to summon the other officials of the department stated to be in connivance with the other accused, was dismissed without appreciating the allegations against them.

5. Heard.

6. It may be accentuated that a report was sought by the Magistrate under Section 202 Cr.P.C. from the Station House Officer, Police Station Lehra wherein after an enquiry having been conducted it was found that accused- Hari Singh had paid illegal gratification to the complainant-petitioner for shifting the motor connection, wherein he had also impersonated himself as Ram Jas and a loss to was being caused to the department. It is only on such allegations that departmental action had been initiated, by charge sheeting the complainant-petitioner for illegally shifting the motor connection of late Ram Jas at the instance of accused Hari Ram. The complainant-petitioner is stated to have not given any satisfactory reply to accused-Hari Ram as regards the amount of Rs.5000/- paid by him, which he stated had been usurped by him. On the other hand, the charges having been got deposited to the department from accused-Hari Ram by accused-respondent Nos.1 and 2 were in performance of their official duties. There was found no sufficient, cogent and prima facie evidence against accused-respondents to have had any enmity or ill-will towards the complainant-petitioner or that they had in connivance with each other falsely implicated him. The departmental action has not even been challenged as is borne out from the impugned judgments. The issue with regard to the shifting of motor connection illegally by the complainant-petitioner has been duly considered by both the Courts below.

7. Evidently, the Courts below have aptly considered the allegations made in the complaint and the application under Section 319 Cr.P.C. and dismissed it qua accused-respondents, whereas summoned accused-Hari Ram. It would thus be worthwhile to refer to the order of the Revisional Court affirming the decision of the trial Court, which reads as under:-

“15. As observed by Id. Lower court, from the record it comes out that in the very beginning, notice dated 23.06.2011 Ex. C8 was sent to complainant/revisionist by no. 1 2. Perusal of this

notice shows that in this notice it was specially mentioned that on the basis of secret information received by JE, Jagroop Singh, it was found that motor in the name of Ramjas has been shifted by taking bribe without any permission. With regard to this complainant/revisionist was asked to submit his reply within two days. No illegality in sending of this notice to revisionist by officials of electricity board could be brought on file. Further, it comes out from Ex. C6 that respondents no. 1 and 2 being official of electricity board went in the property where electric motor no. KHAP64 was installed. They met one person who told himself to be Ramjas, consumer of that connection. They enquired from him about the transfer of electric motor and they came to know that the electric motor has been got shifted at the instance of Krishan Singh, ALM. Thereafter, one application dated 16.06.2011 is established to be moved by consumer Ramjas for allowing him to deposit the charge for transfer of connection. In case Hari Singh accused has represented himself to be Ramjas before authorities then in those circumstances, as held by Id. Trial Court also, respondents can not be held to be liable with regard to this in any manner. Initiation of any action by respondents no. 1 and 2 with regard to shifting of motor connection in the name of Ramjas by complainant by taking illegal gratification can not be said to be sufficient for this court to come to this conclusion that officials of electricity board were enimical with accused Hari Singh. This court also considers that initiation of departmental proceedings by respondent is only a reason for moving complaint by revisionist against respondents. No wrongful gain or wrongful loss is established to be caused in the present case. Besides this, from the enquiry report submitted by police, which was called by Id. Trial court it clearly comes out that accused Hari Singh who has been summoned by Ld. Trial Court testified with regard to shifting of electric motor at the instance of complainant/revisionist. Complainant/revisionist was and is competent to challenge the action taken by respondent against him before the competent authority which has not been show to be done by him.”

8. The Constitution Bench of Hon'ble The Supreme Court of India in **Hardeep Singh vs. State of Punjab**, (2014) 3 SCC 92 held that, “Power under Section 319 Cr.P.C. is a discretionary and an extraordinary 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.”

9. In **Juhru & Ors vs. Karim & Ors**, Criminal Appeal No. 549 of 2023, decided on 21.02.2023, Hon’ble The Supreme Court following the judgment in **Hardeep Singh** (supra) observed and held that, “It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a prima facie case is *sine quo 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 Cr.P.C., 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 is, 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.”

10. The power under Section 482 of Cr.P.C. shall not be utilized as a substitute for second revision. Ordinarily, when a revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse to revision before the High Court under Section 397(1) of Cr.P.C. as it is prohibited under Section 397(3) thereof. However, when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law were not complied with and when it is felt by the High Court that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court, it can entertain a petition under Section 482 of Cr.P.C.[See

Rajathi vs. C. Ganesan (1999) 6 SCC 326, and **Kailash Verma vs. Punjab State Civil Supplies Corpn.**, (2005) 2 SCC 571]

11. A conspectus evaluation of the legal and factual aspects involved in the case, leads this Court to an inescapable conclusion that the present petition is devoid of merits, there being no perversity or illegality in the orders passed by the Courts below. As such the same is dismissed.

12. It is clarified that the observations made herein shall not be treated as an expression on the merits qua accused-Hari Ram, the trial against whom is pending.

(AMAN CHAUDHARY)
JUDGE

09.03.2023
Mehak

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