

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

228

CRR-3826-2017 (O&M)
Date of decision: 15.02.2023

Sushma Anand

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Mukesh Mehra, Advocate
for the petitioner.

Mr. Vinay Kumar Gupta, AAG, Punjab
for respondent No.1-State.

Mr. J.S. Dadwal, Advocate
for respondents No.2 and 3.

None for respondents No.4 to 6.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner is impugning the order dated 15.07.2017 passed by learned Chief Judicial Magistrate, Kapurthala vide which an application under Section 319 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') for summoning of respondents No.2 to 6 namely Priya, Shanu, Abhijit Singh, Suparna Singh and Hemant as additional accused, was declined by the Court below.

Learned counsel appearing for the petitioner submitted that while passing the impugned order the Court below failed to appreciate the evidence led, in its entirety. Learned counsel drew the attention of this Court to the deposition of PW-1 complainant annexed as Annexure P3, and contended that she had reiterated all her allegations levelled in the FIR against the respondents-accused and had also further deposed about the specific and categoric role played by them in the offence in question. He argued with vehemence that the private respondents along

with the other accused had actively conspired and lured the petitioner to part with a huge amount of money i.e. approximately Rs.31 lakhs. However, the Court below gravely erred in observing that evidence qua the respondents-accused was insufficient and only vague allegations had been levelled against them.

Per contra, learned counsel appearing for respondents No.2 and 3 while controverting the submissions made by the counsel opposite, contended that the application under Section 319 of the Cr.P.C. was just an attempt by the complainant to falsely rope in the private respondents as they were related to the other accused who were facing trial. He submitted that a perusal of the allegations levelled in the complaints given by the petitioner to the police before the registration of the FIR, made it abundantly clear that the petitioner at the time of lodging the FIR as well as lateron during her deposition before the Trial Court had made material improvements, which without doubt raised a big question mark about her credibility. Learned counsel submitted that prior to the registration of the FIR, the complainant had given complaints to the police, however, therein no allegations were levelled against the private respondents which also hinted at their false implication in the case in hand.

I have heard learned counsel for the parties and perused the relevant material on record.

Before proceeding further, it would be apposite to reproduce Section 319 of the Cr.P.C. which deals with powers to proceed against other persons appearing to be guilty of offence and reads as under:-

"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 together 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 subsection (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the 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."

On a bare reading of the above provisions of Section 319 Cr.P.C., there can be no doubt, that a duty is cast upon the Court to bring all such persons who prima facie appear to have committed an offence, to justice. In other words, the object and purpose of Section 319 Cr.P.C. is to ensure that any one who prima facie appears to be guilty on the basis of evidence led does not escape trial in relation to that guilt including any person who may have also been dropped by the police during investigation and declared innocent.

The Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab, (Constitution Bench) : 2014(3) SCC 92***, while dealing with the scope of Section 319 Cr.P.C., has observed as under : -

"12. Section 319 Cr.P.C. springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr.P.C.

It is the duty of the Court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 Cr.P.C.?

xx xxx xx xxx

xx xxx xx xxx

xx xxx xx xxx

15. Section 319 Cr.P.C. allows the court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial. He can either be a person named in Column 2 of the chargesheet filed under Section 173 Cr.P.C. or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence.

16. The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the court to give full effect to the words used by the legislature so as to encompass any situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scot free by being not arraigned in the trial in spite of possibility of his complicity which can be gathered from the documents presented by the prosecution.

17. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence."

Adverting to the case in hand, while lodging the FIR, the complainant had specifically alleged that all the accused had taken money from her for investment funding and even while deposing on oath as PW-1 categorically stated that respondents No.2 and 3 namely Priya and Shanu received money from her on behalf of accused Hardip Kaur, to further deliver it to accused Rashmi Singh and Inderjit Singh. Therefore, it is evident from the above that a categoric overt act had been attributed to respondents No.2 and 3 namely Priya and Shanu, which prima facie indicates their active involvement in the crime in question.

This Court thus does not concur with the submissions made by learned counsel appearing for respondents No.2 and 3 that the petitioner had made material improvements in her deposition while stepping into the witness box. It needs to be reiterated that FIR is not an encyclopedia. Admittedly, allegations had been levelled in the FIR qua the accused including respondents No.2 and 3 receiving money and same were reiterated also during trial. No doubt, it was vehemently argued by learned counsel for respondents No.2 and 3 that in some complaints which were given against the accused prior to the registration of the FIR in question, no allegations had been levelled against the private respondents who are sought to be summoned under Section 319 of the Cr.P.C., however, on a pointed query put to both the counsel for the private respondents as well as the learned State counsel as to whether the said complaints were part of the challan presented by the investigating agency, they both replied in the negative. Hence, in the circumstances, non-levelling of any allegations against the private

respondents in some complaints which were purportedly given prior to the registration of the FIR in question would certainly not come to their rescue and could not thus be considered to be material improvements made by the complainant while registering the FIR in question or during her deposition before the Trial Court.

However, as far as respondents No.4 to 6 namely Abhijit Singh, Suparna Singh and Hemant are concerned, a perusal of the contents of the FIR as well as the deposition of the petitioner, it comes across that no overt act has been attributed to them. No doubt, they had been named in the FIR in question and also named by the petitioner during her deposition, however, other than naming them no specific role has been attributed to them. Hence, it would not be a sufficient ground to summon them as additional accused to face trial.

Accordingly, the order dated 15.07.2017 is hereby set aside and respondents No.2 and 3 are ordered to be summoned as additional accused to face trial. However, this Court is of the considered opinion that no evidence has come to the fore which would warrant the summoning of respondents No.4 to 6 to face trial as additional accused. The petition qua respondents No.4 to 6 stands dismissed.

The instant petition stands disposed of in the above terms. However, anything observed hereinabove shall not be taken to be an expression of opinion on the merits of the case.

15.02.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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