

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

203

CRM-M-36189-2019 (O&M)

Date of decision: 02.03.2023

Kuldeep

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Mansur Ali, Advocate
for the petitioner.

Mr. Chetan Sharma, AAG, Haryana.

Mr. Amandeep Goswami, Advocate and
Mr. M.S. Khillan, Advocate
for respondent No.2.

MANJARI NEHRU KAUL, J. (ORAL)

The petitioner is seeking setting aside of the order dated 02.08.2019 (Annexure P-6) passed by learned Judicial Magistrate 1st Class, Karnal vide which he has been summoned to face trial as an additional accused pursuant to an application filed under Section 319 of the Cr.P.C. in case FIR No.112 dated 19.07.2008 (Annexure P-1) registered under Sections 406, 408, 420, 467, 468, 471 and 120-B of the IPC at Police Station Kanjpura, District Karnal.

Learned counsel appearing for the petitioner, while drawing the attention of this Court to the allegations levelled in the FIR, annexed as Annexure P-1, *inter alia*, contends that on a bare perusal, it leaves no manner of doubt that totally vague allegations have been levelled against the petitioner therein inasmuch as there is not even any allegation much less by way of a whisper that the petitioner had received any money or filled in any document along with accused

Sanjay or on behalf of accused Sanjay with respect to the deposit of sales tax amount. He submitted that as per the allegations on 01.02.2003, both accused Sanjay and the petitioner assured the complainant that the former was working an agent and doing the work of depositing sales tax, and thus was well versed with the sales tax laws. Learned counsel submits that assuming for the sake of arguments that any such assurance had been given by the petitioner, it would not in any manner make him culpable for an offence allegedly committed by co-accused Sanjay who had not deposited the sales tax amount which had been given to him by the complainant and others. Learned counsel has further contended that while stepping into the witness box as PW-1, the complainant made material improvements and levelled allegations against the petitioner of being a conspirator and a guarantor with respect to the money which had been handed over to co-accused Sanjay which the lower Court failed to take into account, while passing the impugned order. In support, learned counsel drew the attention of this Court to the testimony of the complainant before the Trial Court as PW1 (annexed as Annexure P-3). Learned counsel still further submitted that no doubt allegations had also been levelled against the petitioner of having hurled abuses at the complainant when the latter went to his house, however, even assuming for the sake of arguments, though not conceded, mere hurling of abuses would not in any manner constitute an offence under Sections 406, 409, 420, 467, 468 and 471 of the IPC. Learned counsel asserted that the investigating agency during investigation had rightly found the petitioner innocent and placed him in column No.2 as it was a matter of record that even as per the FSL

report (Annexure P-7) handwriting in Form C and D had been found to be that of co-accused Sanjay and there was no document whatsoever, in the handwriting of the petitioner.

Per contra, learned counsel appearing for the complainant respondent No.2 while opposing the prayer and submissions made by the counsel opposite, invited the attention of this Court to the testimony of the complainant-respondent No.2 as PW-1 and urged that the complainant had reiterated all the allegations levelled against the petitioner as well as accused Sanjay. He submitted that the petitioner was working as a commission agent and it was only on the assurance given by him on 01.02.2003 to the complainant that the latter handed over the amount in question to co-accused Sanjay. He submitted that the petitioner was also a conspirator to the crime in question which was further evident from the fact that when the complainant and others went to the house of the accused to confront accused Sanjay, it was the petitioner who met them and hurled abuses besides threatening them with dire consequences.

I have heard learned counsel for the parties and perused the relevant material on record including the impugned order as well as the testimony of the complainant and the allegations levelled in the FIR in question.

While exercising power under Section 319 of the Cr.P.C. the Court must satisfy itself as to whether some material exists which prima facie indicates the involvement of the proposed accused with the crime in question. Object behind the enactment of Section 319 of the Cr.P.C. is to ensure that no one who appears guilty escapes trial in

relation to that guilt.

Before proceeding further, it would be apposite to reproduce the provisions of Section 319 of the Cr.P.C. which 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."

What flows from a minute reading of the above provisions is that mere levelling of any allegation against a person by the complainant while registering an FIR and even while stepping into the witness box would not be sufficient to summon him as an additional accused under Section 319 of the Cr.P.C. unless and until there is a reasonable probability of the case against the proposed accused ending in conviction for the offence concerned.

The Constitution Bench of 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 held as under : -

“98. 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.

99. 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 un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused.”

Coming to the case in hand, all the allegations in the FIR as well as deposition of the complainant qua the receipt of the amount from him, filing and altering of the tax returns have been specifically levelled against accused Sanjay. The only allegations levelled against the petitioner are that he assured the complainant that accused Sanjay was an agent and doing the private work for depositing the sales tax.

Admittedly, there is no document in the handwriting of the petitioner nor any amount has been received by him from the complainant. Therefore, it cannot be said that there is sufficient evidence to summon the petitioner as additional accused under Section 319 of the Cr.P.C. to face trial.

In the facts and circumstances as enumerated hereinabove, this Court has no hesitation in observing that the Trial Court erred in summoning the petitioner to face trial as an additional accused under Section 319 of the Cr.P.C. in the absence of any strong and cogent evidence against him.

Accordingly, the instant petition is allowed and the order dated 02.08.2019 is set aside.

02.03.2023

Vinay

(MANJARI NEHRU KAUL)
JUDGE

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