

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

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CRM-M-41709-2023

Date of decision: 11.09.2023

Monika Sood

....Petitioner

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Rishu Mahajan, Advocate for the petitioner.

AMAN CHAUDHARY, J.

1. Prayer in the present petition filed under Section 482 Cr.P.C. is for setting aside the order dated 01.07.2023, Annexure P-5, passed by Additional Sessions Judge, Jalandhar dismissing the revision petition filed against the order dated 03.02.2020, Annexure P-4 rendered by the Judicial Magistrate Ist Class, Jalandhar whereby the application filed under Section 319 CrPC was allowed and the petitioner has been summoned as additional accused to face trial in FIR No.102, dated 11.07.2013, registered under Sections 406 and 420 IPC, at Police Station Division No.6, Jalandhar.

2. The genesis of the present case as it emerges from the perusal of the FIR, statement of the complainant-APS Teji and impugned orders is that, main accused-Atul Sood and his wife i.e., the present petitioner are Directors of M/s MAS Pharmaceuticals (P) Ltd., which is the Proprietor of M/s City Medicine Centre, for which loan was sought to the tune of Rs.219 lacs, of which the applicant was Atul Sood and petitioner was the guarantor. For the aforesaid purpose, 3 properties were got mortgaged with the Bank, out of which 1 was

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found to be not existing and the other 2 were sold subsequently to 4 different persons, including Mrs. Pargati, wife of co-accused Pawan Gulati, who was the Chartered Accountant and had prepared a false balance sheet of M/s City Medicine Centre to show that main accused Atul Sood was the owner of it. Further allegations are of connivance of bank officials and valuer, who had assessed the value of the properties in question, 12 times higher than the actual.

3. Learned counsel for the petitioner contends that after registration of the FIR, investigation was conducted and final report under Section 173 CrPC only against accused Atul Sood was presented in Court, based on which charges were framed against him. The petitioner being the wife of accused- Atul Sood, has been falsely implicated in the present case. It is a case of civil nature given a criminal texture. Moreso, the charges were framed only against Atul Sood, who is the sole proprietor of M/s City Medicine Centre and had availed such loan facility and the petitioner only stood as a guarantor.

4. Ms. Himani Arora, AAG, Punjab, who has appeared on receipt of advance copy of the petition, opposes the same by submitting that the impugned orders have been rightly passed by the Courts below on account of the fact that the petitioner, who is the wife of the main accused-Atul Sood, stood as a guarantor for the loan advanced to him, by showing himself to be the owner of M/s City Medicines Centre, based on fake audited balance sheets prepared by co-accused-Chartered Accountant, Pawan Gulati and being fully aware that in M/s MAS Pharmaceuticals (P) Ltd., she and Atul Sood are Directors and the said company was infact the actual proprietor of the above centre. Her thrust was that the husband of the petitioner in connivance with her and other co-accused cheated the bank. She prays for the dismissal of the petition.

5. Heard.

6. The criminal machinery was set into motion by the registration of the FIR in the year 2013 by complainant-APS Teji, Zonal Manager, Punjab & Sind Bank, Model Town, Jalandhar, challan was presented in 2014. After framing of charges, 3 prosecution witnesses were examined and in 2020, an application under Section 319 CrPC was filed by the prosecution for summoning the petitioner, Pawan Gulati, Chartered Accountant and his wife, Pargati Gulati, as additional accused, which was allowed by the trial Court on 03.02.2020 and unsuccessfully challenged only by the petitioner in revision, dismissed in 2023.

7. A reference to the relevant portion of the order of the trial Court, whereby the application filed under Section 319 CrPC was allowed, can be made, which reads thus:

“...Furthermore, the said land has already been sold by the accused. It is further important to note that the complainant has filed the original complaint Ex.PW3/A against accused Atul Sood, Monika Sood, Pawan Gulati and Pargati Gulati on 15.09.2012 and the present FIR was registered only against accused Atul Sood on 11.07.2013. Not even a single reason has been given by the Investigating Officer that why no offence has been made out against all the accused including the bank officials. But the system has gone up to the extent that DA Legal clearly given his opinion in favour of the accused by submitting that the matter in this case is civil in nature and he advised to the prosecution for not lodging the FIR against the accused persons but inspite of loss of Rs.219 Crores of public money all the functionaries were performed negative role to protect the accused...”

8. It would also be apposite to refer to the order of the revisional Court passed while upholding the summoning order, wherefrom the following observations require to be noticed:

“From such evidence led on record by the prosecution, it is quite clear that the prosecution has produced on record copy of affidavit purportedly executed by accused Atul Sood as

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Ex.PW3/B, wherein he has declared himself to be sole proprietor of M/s City Medicine Centre. As per the case of prosecution, M/s City Medicine Centre availed loan facility from the complainant Bank and his wife stood as guarantor in such loan facility. Perusal of file reveals that prosecution has produced on record copy of record pertaining to M/s MAS Pharmaceuticals (P) Ltd. which is proprietor of M/s City Medicine Centre (Ex.PW3/25). Further, the record pertaining to M/s M.A.S. Pharmaceuticals (P) Ltd. reveals that it bears signatures of Monika Sood as Director of such firm. Thus, it is quite clear that when Atul Sood has represented himself to the complainant bank, at the time of availing loan facility, to be sole proprietor of M/s City Medicine Centre at that time, present revisionist stood guarantor on behalf of her husband and she was very well aware of the fact that M/S MAS Pharmaceuticals (P) Ltd. is real proprietor of M/s City Medicine Centre and not her husband, as stated by her husband in his affidavit Ex.PW3/B. Once the revisionist has been working as Director of M/S M.A.S. Pharmaceuticals (P) Ltd. which is recorded to be Proprietor of M/s City Medicine Center, then it can be validly concluded for the purposes of present revision that revisionist has been actively involved in The business activities of her husband and taking of loan for the purpose of running business falls within that domain. As such, it is quite clear that revisionist along with her husband have availed loan facility by concealing the true facts.”

9. Before proceeding further, it would be expedient to refer to Section 319 Cr.P.C. which reads thus:-

“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

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commenced a fresh, 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.”

10. Evidently, the foregoing provision employs the term ‘appears’, thereby empowering the court to proceed against any person, other than the accused, who has, as per the record, evidently perpetrated the offence. The underlying object of rule of law being to ensure that none, who may even appear to have committed an offence, goes scott free.

11. It would be profitable to refer to the landmark judgment by Constitution Bench of Hon’ble The Supreme Court in **Hardeep Singh vs. State of Punjab and Others**, 2014 (3) SCC 92, elucidating the provision of Section 319 CrPC wherein it was observed that the Court has to only see at the stage of Section 319, whether a prima facie case is made out although the degree of satisfaction has to be much higher and held thus:

“12. Section 319 CrPC 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. PC.

13. 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.

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95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two- Judge Bench of this Court in *Vikas v. State of Rajasthan*, held that on the *objective satisfaction* of the court a person may be "arrested" or "summoned", as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

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106. 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.”

12. Contextually, the pronouncement of Hon’ble The Supreme Court, **Manjeet Singh vs. State of Haryana**, 2021 SCC OnLine SC 632, can be referred to, wherein the judgement of the High Court affirming the order of the trial Court dismissing the application under Section 319 CrPC, was set aside and the scope and ambit of powers of a Court under the aforesaid provision of law, were summarised thus:

“(i) That while exercising the powers under Section 319 CrPC and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;

(ii) for the empowerment of the courts to ensure that the criminal administration of justice works properly;

(iii) the law has been properly codified and modified by the legislature under the CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;

(iv) to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;

(v) 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;

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(vi) Section 319 CrPC allows the court to proceed against any person who is not an accused in a case before it;

(vii) 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;

(viii) Section 319 CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial;

(ix) the power under Section 319(1) CrPC can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pre-trial stage intended to put the process into motion;

(x) the court can exercise the power under Section 319 CrPC only after the trial proceeds and commences with the recording of the evidence;

(xi) the word “evidence” in Section 319 CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents;

(xii) it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319 CrPC is to be exercised and not on the basis of material collected during the investigation;

(xiii) if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 CrPC and can proceed against such other person(s);

(xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under Section 319 CrPC can be exercised;

(xv) that power under Section 319 CrPC can be exercised even at the stage of completion of examination-in-chief and the court need not has to wait till the said evidence is tested on cross-examination;

(xvi) even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of Section 319

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CrPC and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses);

(xvii) while exercising the powers under Section 319 CrPC the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.”

13. In the aforesaid case of **Manjeet Singh** (supra), Hon'ble The Supreme Court whilst allowing the application filed by the prosecution under Section 319 CrPC observed the allegations against the persons who were being summoned as additional accused, had been levelled by the complainant from the very inception of the FIR and subsequently too in his deposition but still the application came to be dismissed by the Courts, the position in the present case is no different. Though without meaning to delve deeper into the intricacies of case or evaluating the evidence on merits, it being not the stage for the same, yet only for the purpose to decide the plea raised, it may be accentuated apropos the aforesaid that the husband of the petitioner had got the loan sanctioned, with her, who was specifically named as an accused in the FIR, being a guarantor thereof, to the limit of Rs.1.5 crore, which was later on increased to Rs.1.7 crore by the complainant-Bank and two properties were mortgaged with the Bank for the same. Indubitably, the petitioner was one of the two Directors of M/s MAS Pharmaceuticals (P) Ltd., the other being the main accused Atul Sood, who had shown himself to be owner of M/s City Medicine Centre on the basis of alleged forged balance-sheets, as stated by the complainant, prepared by co-accused Pawan Gulati, a Chartered Accountant, to whose wife, a portion of one of the mortgaged properties was sold, subsequent to it having been mortgaged to secure the loan. These acts appear to have been carried out in complete subterfuge. *Ad*

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rem, the factum of M/s MAS Pharmaceuticals (P) Ltd., being the owner of M/s City Medicine Centre was known to the petitioner, who stood as a guarantor for the loan advanced to M/s City Medicine Centre, being a signatory to the balance sheets of the parent firm, i.e., M/s MAS Pharmaceuticals, as noticed by the Revisional Court. It is the conduct and knowledge of commission of crime, which appears to have weighed with the Courts below, when the main person, who transacted with the complainant-bank was none other than her husband. The material to show her clear criminal intent in the offences alleged is a matter of trial but at this stage given the aforesaid, no marked infirmity can be found by this Court in initiating the process to bring her in, as an additional accused, when to the mind of the Courts below, her prima facie involvement being discernible from the FIR and the statement of complainant-Zonal Manager of the Punjab & Sind Bank, while appearing as PW-3, whereby the role of the petitioner was further amplified of having helped the co-accused-Atul Sood in cheating the bank of huge amount. In **Sandeep Kumar vs. State of Haryana**, 2023 SCC OnLine SC 888, the order of the trial Court allowing the application under Section 319 CrPC had been quashed by the High Court by observing that there was no material on record to summon the petitioner, as an additional accused, he having been found innocent during investigation and it could not even be established on record whether he was attributed any injury and moreover as per the version of the complainant himself, the petitioner had allegedly fled away from the spot. However, Hon'ble The Supreme Court, set aside the same by holding that, "...In our opinion, whereas the trial court was absolutely correct to have summoned the accused based on the evidence of PW-9, the High Court committed a grave error in allowing the revision of the accused. Under the facts and circumstances of the case and on the

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powers of the Court under Section 319 and based on the evidence of PW-9, it was absolutely necessary for the trial court to have summoned the three accused, including the revisionist. The reasoning given by the High Court, cannot be accepted at the stage of consideration of application under Section 319 Cr.PC. The merits of the evidence has to be appreciated only during the trial, by cross examination of the witnesses and scrutiny of the Court. This is not to be done at the stage of Section 319, though this is precisely what the High Court has done in the present case...” It was further held that, “The entire purpose of criminal trial is to go to the truth of the matter. Once there is satisfaction of the Court that there is evidence before it that an accused has committed an offence, the court can proceed against such a person. At the stage of summoning an accused, there has to be a prima facie satisfaction of the Court...”

14. In **Sukhpal Singh Khaira vs. State of Punjab**, (2023) 1 SCC 289, Hon’ble The Supreme Court shed light on the powers bestowed under Section 319 Cr.P.C. to summon a person who, from the evidence, appeared to have a role in the commission of the offence and the appellant therein was initially not arraigned as an accused but was summoned only on the statements of witnesses, by the trial Court, which was upheld.

15. The entire effort, therefore, is not to allow the real perpetrator of an offence to get away unpunished. It is with the said object in mind that a constructive and purposive interpretation should be adopted that advances the cause of justice and does not dilute the intention of the statute conferring powers on the court to carry out the avowed object and purpose to try the person to the satisfaction of the court as an accomplice in the commission of the offence that is the subject matter of trial. The desire to avoid trial is so strong that an accused

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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, were the observations of Hon'ble The Supreme Court in **Yashodhan Singh vs. State of U.P.**, 2023 SCC OnLine SC 890, wherein it held that, "...this Court observed in *Hardeep Singh* that if 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."

16. The Revisional Court has rightly observed that in a case like such, wherein the insinuations are as grave as that of defrauding a financial institution of public money amounting to Rs.219 lacs, not only the investigating officer had let off all the accused without giving any reasons but even the DA (Legal) opined it to be a case of civil nature. The allegations levelled are otherwise correct or not, has to be decided on the basis of the evidence to be led during the course of trial.

17. The petitioner in the present case has otherwise already availed of the remedy of filing a criminal revision petition, though unsuccessfully before the Additional Sessions Judge, thus, this petition would amount to a second revision petition under the guise of petition under Section 482 CrPC, as per Section 397(3) CrPC, is the view of this Court, which finds support from the judgment in the case of **Krishnan vs. Krishnaveni and another** 1997(4) SCC 241, passed by Hon'ble The Supreme Court, wherein it was held that in appropriate cases in order to meet the ends of justice or to prevent abuse of the process, the High Court is preserved with inherent power, which should be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings.

18. The High Court can entertain a petition under Section 482 of CrPC

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 that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court [See: **Kailash Verma vs. Punjab State Civil Supplies Corpn.**, (2005) 2 SCC 571]

19. This Court finds no extraordinary circumstances in the immediate matter to invoke its inherent power under Section 482 CrPC and accede to the prayer of the petitioner.

20. The facts and circumstances summarised in the foregoing discussion, when holistically considered in the backdrop of the legal principles enunciated, this Court finds no illegality or perversity in the impugned orders, warranting any interference. There being no substantive merit in the present petition, the same is hereby dismissed.

21. Nothing herein shall be treated as an expression on the merits of the case and the trial Court shall proceed and decide the matter, independent of any observation made in the present judgment, which was only for the purpose of adjudicating the instant petition.

(AMAN CHAUDHARY)
JUDGE

11.09.2023

Ankur

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