

**125 IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH****CRM M-51258-2023 (O&M)****Date of Decision: 03.11.2023**

Gurminder Singh and another

.....Petitioners

Versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHUPresent: Mr. Kunal Dawar, Advocate,
for the petitioners.

Mr. C.L. Pawar, Addl. AG, Punjab.

None for respondent No.2 despite service.

MAHABIR SINGH SINDHU. J.

Present petition has been filed under Section 482 of Code of Criminal Procedure (for short "Cr.P.C.") for quashing of order dated 25.04.2023 passed by Judicial Magistrate First Class, Jalandhar (P-9) whereby petitioners were summoned under Section 319 Cr.P.C to face trial in FIR No. 21 dated 06.03.2021, under Sections 406 and 420 read with Section 34 IPC, registered at Police Station Navi Baradari, Jalandhar; further prayer is for quashing of the order dated 31.07.2023 passed by learned Additional Sessions Judge, Jalandhar (P-10) vide which, revision petition against the summoning order was dismissed.

2. Short reply dated 03.11.2023 by way of affidavit of Sh. Nirmal Singh, PPS, Assistant Commissioner of Police, Sub-Division Central, Jalandhar, filed on behalf of respondent No.1-State is taken on record. Copy already supplied to other side.

Registry to tag the same at appropriate place.

3. Learned counsel for the petitioners contends that during investigation, petitioners were found innocent and regarding their complicity, there is no material available on record; hence, impugned orders passed by both the Courts below are not legally sustainable.

In support of the above contention, reference has been made to ***Hardeep Singh Versus State of Punjab and others 2014(3) SCC 92.***

4. On the other hand, learned State counsel while opposing the prayer submitted that learned revisional Court while dismissing the petition vide order dated 31.07.2023 specifically directed both the petitioners to appear before trial Court on 07.08.2023; but despite that, they did not join the proceedings; rather, left the country and have gone to Portugal.

Also submitted that both the petitioners are accused in two other criminal cases of similar nature; hence, habitual of indulging in such activities. Further submits that against both the petitioners, proceedings under Section 82 Cr.P.C have already been initiated by learned trial Court; thus, present petition deserves to be dismissed with exemplary costs.

5. Heard learned counsel for the parties and perused the records.

6. It transpires that initially an FIR No.21 dated 06.03.2021 was registered against five accused, including present petitioners with the allegations of fraud and cheating. After investigation, report under Section 173 Cr.P.C was submitted against three accused (i) Navdeep Kaur; (ii) Ranjit Singh and; (iii) Gagandeep Singh; but present petitioners were put in column No.2, thereof.

7. It is a matter of record that after framing of the charges against co-accused, three PWs have been examined. Also transpires that PW-1 & PW-2 are not supporting the case of prosecution and as a result thereof, they were

declared hostile; however, PW-3 Surinder Pal has fully supported the prosecution case. For reference, examination-in-chief of PW-3, recorded by learned trial Court on 26.10.2022 is recapitulated as under:-

“I had filed one complaint against the owners of M/s OLS Whizz Pvt. Ltd. Company. The said complaint no. 1897/PTM dated 03.04.2021. I have seen the said complaint today on the judicial file and the same is Ex.PW-3/A. I identify my signature on the same at point A. Before 5 or 6 years accused Ranjit Singh son of Gurmukh Singh, Navdeep Kaur, Gagandeep Singh, Gurminder Singh and Mandeep Kaur contacted with me through my some known persons. All the abovesaid persons told me that they are running Whizz Powers (M/s OLS Whizz Pvt. Ltd. Company and the same was approved by the Government. They are having office at SCO-3, 3rd Floor PPR Market Cheema Nagar Jalandhar in which Ranjit Singh and Gagandeep Singh are Directors of the company. Navdeep Kaur is the wife of Ranjit Singh. Gurminder Singh and Mandeep Kaur are brother in law and sister of Ranjit Singh (Shandhu and Sali). They told me regarding the company schemes and said that they are taking Rs.1000/2000/- per month from their member in advance and giving them LED TV, Home Theater and RO, CCTV etc. On installments. They also told me that in the year 2017 they had started gold kitty scheme in which they were taking Rs.2000/3000/- per month for 11 installments and they promised on 12 installments they will return cash amount or gold. On the inducement of abovesaid accused I had given a sum of Rs.8,00,000/- to the abovesaid accused. Accused has also taken cash amount from my relatives and known persons on the pretext of gold kitty scheme in their company. Whenever I deposited the installments the abovesaid accused showed the receipt of the amount on their websites (WWW.Whizzpower.com) through their Login ID and send the SMS on my mobile number. For some times, company used to give us goods and gold etc. as per their promise committed by them regarding the abovesaid scheme but thereafter in the year 2019 neither the accused returned any gold ornaments and nor returned money to me or my relatives or other persons.

After completion of my installment accused did not give me any gold as per their conspiracy they had showed digital wallet on their website inspite of showing my amount. I requested the accused again and again for the return of my amount which had taken by the abovesaid accused but they did not give any gold to me nor they returned my amount taken by them. I had given the said amount to the accused through cheques on different dates. I had given the statement of my account regarding the transfer of money in the account of the company of the accused. Some of the amount was given by me in cash to the accused. During the investigation of this case I recorded the statement of the accused in which I mentioned the details of the cheques given by me to the abovesaid accused. Abovesaid accused in connivance with each other cheated me and my relatives on the pretext of gold kitty and had taken the abovesaid amount from me and my relatives. Abovesaid accused neither returned my abovesaid amount of Rs.8,00,000/- taken from me nor given me any gold or any goods articles as per their promise. I identify both the accused Ranjit Singh and Gangandeep through VC. Remaining persons mentioned as accused in my complaint Ex.PW-3/A are not present in the Court. He may kindly be summoned to face the trial.”

8. Upon perusal of the above deposition, it is clearly discernible that petitioners actively participated in the commission of crime; thus, learned trial Court, after taking into consideration the testimony of PW-3 as well as the material available on record, summoned both the petitioners, while observing that *prima-facie* case under Sections 406 & 420 read with Section 34 IPC is made out against them.

9. Even learned Revisional Court also after due consideration of the matter, affirmed the course adopted by learned trial Court. The testimony of PW-3 clearly indicates that from the very beginning petitioners were named in

the present case and specific role(s) have been attributed to both of them. As per initial version in the FIR also, both the petitioners were specifically named.

10. Although, after investigation, petitioners were put in column No.2 of the report under Section 173 Cr.P.C, but that does not mean that they have been finally declared innocent. Also noteworthy that ld. Revisional Court while passing the impugned order dated 31.07.2023, directed both the petitioners to join the proceedings before trial Court, but instead of complying with the judicial order, both of them left the country and now stated to have gone to Portugal.

There is no quarrel that both the petitioners were well aware about the pendency of present FIR, summoning order as well as the dismissal of their revision petition; yet they left the country and successfully evading the process of law, without there being any justification.

11. Above all, it is a matter of record that learned trial Court has already initiated proceedings under Section 82 of the Cr.P.C against both the petitioners vide order dated 22.08.2023 and for reference, the same reads as under:-

“Accused Ranjit Singh and Gagandeep produced by the jail authorities. They be again produced on 10.10.2023.

Nonailable warrants issued for the arrest of accused Gurminder Singh and Mandeep Kaur received back unexecuted. In view of report made, this Court is satisfied that accused Gurminder Singh and Mandeep Kaur are avoiding the execution of the warrants of arrest and they are concealing himself to avoid execution of warrants upon them. As such Ahlmad is ordered to issue a proclamation u/s 82 of Cr.P.C for 10.10.2023.”

A perusal of the above order clearly reveals that both the petitioners are avoiding the execution of their arrest warrants and have no respect for the rule of law.

12. Apart that, it has come on record by way of an affidavit dated 03.11.2023 of Nirmal Singh, PPS, Assistant Commissioner of Police, Sub-Division Central, Jalandhar that both the petitioners are involved in other criminal cases of similar nature and details of which are as under:-

- “(i) FIR No 37 dated 17.02.2021 u/s 406/420/34 IPC P.S Div-01 Jalandhar.*
- (ii) FIR No. 17 dated 16.02.2021 u/s 406/420/120-B IPC P.S. Div.03 Jalandhar.*
- (iii) FIR No.32 dated 13.03.2021 u/s 406/420/120-B IPC, P.S. Div.03, Jalandhar.*
- (iv) FIR NO. 14 dated 19.02.2021 u/s 406/420/34 IPC P.S. Div.04, Jalandhar.*
- (v) FIR No 30 dated 20.02.2021 u/s 406/420/34 IPC P.S Div-05 Jalandhar.*
- (vi) FIR No 24 dated 23.02.2021 u/s 406/420/34 IPC P.S Div-06 Jalandhar.*
- (vii) FIR No 199 dated 17.07.2020 u/s 406/420/120-B IPC P.S Div-07 Jalandhar.*
- (viii) FIR No 20 dated 19.02.2021 u/s 406/420/34 IPC P.S Div-07 Jalandhar.*
- (ix) FIR No 21 dated 20.02.2021 u/s 406/420/120-B IPC P.S Div-07 Jalandhar.*
- (x) FIR No 77 dated 04.04.2021 u/s 406/420/34 IPC P.S Div-08 Jalandhar.*
- (xi) FIR No 78 dated 04.04.2021 u/s 406/420/34 IPC P.S Div-08 Jalandhar.*
- (xii) FIR No 79 dated 04.04.2021 u/s 406/420/34 IPC P.S Div-08 Jalandhar.*
- (xiii) FIR No 80 dated 04.04.2021 u/s 406/420/34 IPC P.S Div-08 Jalandhar.*
- (xiv) FIR No 81 dated 04.04.2021 u/s 406/420/34 IPC P.S Div-08 Jalandhar.*
- (xv) FIR No 82 dated 04.04.2021 u/s 406/420/34 IPC P.S Div-08 Jalandhar.*
- (xvi) FIR No 83 dated 04.04.2021 u/s 406/420/34 IPC P.S Div-08 Jalandhar.*
- (xvii) FIR No 84 dated 04.04.2021 u/s 406/420/34 IPC P.S Div-08 Jalandhar.*
- (xviii) FIR No 29 dated 19.04.2021 u/s 406/420/34 IPC P.S Basti Bawa Khel, Jalandhar.*
- (xix) FIR No 22 dated 22.02.2021 u/s 406/420/120-B IPC P.S Bhargo Camp. Jalandhar.*

(xx) *FIR No 14 dated 20.02.2021 u/s 406/420/34 IPC P.S Cantt. Jalandhar.*

(xxi) *FIR No 29 dated 19.02.2021 u/s 406/420/34 IPC P.S Rama Mandi, Jalandhar.*

Also noteworthy that factum of aforesaid FIRs has not been controverted at the instance of petitioners by way of any rejoinder.

13. *A fortiori*, the revision petition filed by petitioners has already been dismissed, thus, entertaining the present petition under Section 482 Cr.P.C, virtually amounts to second revision and which, in view of the provisions of Section 397(2) Cr.P.C is clearly barred.

14. Of course, in a given case, to secure the ends of justice; or to prevent the miscarriage of justice, the provisions of Section 482 Cr.P.C can be invoked; but as discussed above, in the present case, both the petitioners are deliberately avoiding the process of law, hence, there would be no justification to follow such a course in their favour. Rather, interference with the impugned orders passed by both the Courts below and accepting the prayer of petitioners, would result into travesty of justice and giving premium to the persons, who have no respect for the rule of law.

15. Although, learned counsel for the petitioners try to convince the Court while relying upon the judicial precedent in ***Hardeep Singh's case*** (supra), but the same is not helpful in view of the factual position discussed herein-above and more particularly, when both the Courts below have concurrently come to the conclusion that *prima facie* case is made out against both the petitioners.

Also necessary to mention here that Hon'ble Supreme Court after referring the ***Hardeep Singh's case*** (supra) while dealing with the provisions of Section 319 Cr.P.C in **Criminal Appeal No.2195 of 2023** titled as '**Sandeep Kumar Vs. The State of Haryana and another**' decided on 28.07.2023 *inter*

alia held that entire purpose of criminal trial is to go to the truth of the matter and for reference relevant part of the judgment reads as under:-

“4.
.....

*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. The evidence which was there before the Court was of an eye witness who has clearly stated before the Court that a crime has been committed, inter alia, by the revisionist. The Court need not cross-examine this witness. It can stop the trial at that stage itself if such application had been moved under Section 319. The detail examination of the witness and 10 other witnesses is a subject matter of the trial which has to begin afresh. The scope and ambit of Section 319 CrPC has been discussed and dealt with in detail in the Constitution Bench judgment of **Hardeep Singh v. State of Punjab and Others** reported in (2014) 3 SCC 92 where it said:*

“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.”

5. *In **Hardeep Singh** (supra), this court further said that the Court only has to see at the state of Section 319, whether a prima facie case is made out although the degree of satisfaction has to be much higher.*

*“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.

In Para 106 it stated as under:

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 CrPC. In Section 319 CrPC the purpose of providing if “it appears from the evidence that any person not being the accused has committed any offence” it 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 CrPC to form any opinion as to the guilt of the accused.”

In our considered opinion, the prosecution had fully made out its case for summoning the three as accused under Section 319, Cr.PC, so that they may also face trial.”

15. In view of the facts and circumstances discussed herein-above, this Court is of the considered opinion that present petition is complete misuse of the process of law; hence, the same is liable to be dismissed with costs of Rs.1 lakh.

16. Ordered accordingly.

17. Costs be deposited by both the petitioners in equal share i.e. Rs.50,000/- each with the Poor Patients Fund, Post Graduate Institute of Medical Education and Research, Chandigarh and compliance report be sent by the quarter concerned to the Registry of this Court.

18. Needless to say that observations made above be not construed as an expression of opinion on the merits of the controversy pending consideration before learned trial Court in any manner.

19. Pending misc. application(s), if any, shall also stand disposed off.

03.11.2023
SN

(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No