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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.5051-2024 (O&M)
Date of Decision: 01.02.2024

Rajinder Goyal

..... Petitioner

Versus

State of U.T. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present:- Mr. Vrishank Suri, Advocate,
for the petitioner.

Mr. Abhinav Gupta, Addl. P.P., U.T., Chandigarh,
for respondent No.1.

MAHABIR SINGH SINDHU, J.

Present petition has been filed, under Section 482 of the Code of Criminal Procedure, 1973, (for short, 'Cr.P.C') for quashing of the impugned order dated 21.05.2022 (P-7) passed by learned Judicial Magistrate First Class, Chandigarh, (for short, 'JMIC'), whereby an application of petitioner moved under Section 319 of Cr.P.C. was dismissed.

2. Notice of motion to respondent No.1 only.
3. On asking of the Court, Mr. Abhinav Gupta, Additional Public Prosecutor, U.T., Chandigarh accepts notice on behalf of respondent No.1.
4. Petitioner lodged an FIR No.29 dated 18.01.2013 under Sections 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860 (for short, 'IPC') at Police Station, Sector 17, Chandigarh, with the allegations of certain financial bungling in his Account No.65004564823 maintained with State Bank of Patiala,

Sector-17, Chandigarh-respondent No.2 (now State Bank of India).

5. After investigation, in terms of Section 173 Cr.P.C., police submitted two separate reports against one Amandeep Katyal on 01.07.2014. As the alleged embezzlement of Rs.6,45,325/- and Rs.1,57,200/- was running in two consecutive financial years i.e. 2008 and 2009 respectively, therefore, two separate challans were presented. Learned Chief Judicial Magistrate, Chandigarh, (for short, 'CJM'), after taking into consideration the material available on record, charge-sheeted aforesaid Amandeep Katyal on 24.09.2014 for commission of offences punishable under Sections 420, 467, 468, 471 and 120-B IPC, to which, he pleaded not guilty and claimed trial in both the cases i.e. (i) PCH-1605-2014 (State Vs. Amandeep Katyal) & (ii) PCH-1606-2014 (State Vs. Amandeep Katyal).

6. Also discernible that on 16.07.2015, petitioner moved an application under Section 173(8) Cr.P.C. for seeking further investigation, but it was dismissed by learned CJM, vide order dated 21.01.2016 (P-3).

7. Thereafter, both the trials were adjourned from time to time for recording persecution evidence and in PCH-1606-2014, the last prosecution witness (PW-11) was examined on 29.03.2019 and at this stage, an application under Section 319 Cr.P.C was moved by the petitioner. Similarly, in PCH-1605-2014 (State Vs. Amandeep Katyal), last witness (PW-10) was examined on 29.03.2019 and an application under Section 319 Cr.P.C was filed in this case on 31.10.2019. Upon hearing the parties, learned JMJC dismissed both the applications vide order dated 21.05.2022. On 07.09.2022, statement(s) of accused-Amandeep Katyal were recorded under Section 313 Cr.P.C and both the

cases were adjourned for defence evidence. After availing various opportunities, one DW-Ashwani Kumar, Registry Clerk of the office of Sub-Registrar, Sunam, District Sangrur, was examined on behalf of the accused on 07.12.2022. Ultimately, after taking into considerations the material available on record, learned JMIC convicted and sentenced aforesaid Amandeep Katyal on 31.10.2023 in the following manner:-

Sr. No.	Name accused	ofUnder Section	Sentence	Fine Rs.	Default Sentence
1.	Amandeep Katyal	420 IPC	Three years (R.I)	Rs.500/-	7 days (R.I)
		467 IPC	Three years	Rs.500/-	
		468 IPC	Three years (R.I)	Rs.500/-	7 days (R.1)
		471 IPC	Two years (R.I)	Rs.500/-	

8. It is contended by learned counsel for the petitioner that in the FIR, there are specific allegations against respondent No.3-M.S.Walia as well as other bank employees for hatching a criminal conspiracy with above Amandeep Katyal for fraudulent withdrawal of money from his account, yet the Investigating Officer did not file report under Section 173 Cr.P.C against respondents No.3 to 8. Further contended that none of the accused has been shown in Column No.2 (now Column No.12) of the report under Section 173 Cr.P.C; hence, the investigation is defective and the whole matter deserves to be re-examined. Also contended that there were major discrepancies in the investigation while not interrogating the bank employees (respondents No.3 to 8), who were actively involved in hatching a criminal conspiracy with above Amandeep Katyal.

9. On the other hand, learned counsel for respondent No.1-U.T, Chandigarh, submitted that as on today, no inquiry or trial is pending; rather,

both the cases ended on 31.10.2023, resulting into conviction and sentence of Amandeep Katyal. Also submitted that convict-Amandeep Katyal has already preferred two separate appeals against his conviction and sentence and which are pending for 05.04.2024, whereas present petition has been filed on 22.01.2024; thus, the same is liable to be dismissed only on that count.

10. Heard learned counsel for the petitioner as well as respondent No.1 and perused the paper book.

11. Learned JMIC while rejecting the application under Section 319 Cr.P.C. on 21.05.2022, observed as under:

“7. The things which are required to be adjudicated for the purpose of this application is what new evidence is available with the Court and the degree of satisfaction. Now, while stepping into the witness box the complaint has stated on oath, his act and conduct of promptness in getting the F.I.R. registered. He has also proved on record this complaint given to the police as Ex.PW7/A. Now from the parallel reading of the statement recorded in this court along with the complaint it is clear that there are only generic allegations against all the accused sought to be summoned. Considering the fact that there were bald allegations of general in nature and the investigating officer after thorough investigation did not find sufficient evidence has not filed the charge sheet against them, so in the absence of cogent and convincing evidence mere probability of complicity is not sufficient to summon these persons. As such there is no ground to summon these accused. Accordingly, the application in hand is devoid of any merits and is hereby dismissed.”

Perusal of the afore-said extract reveals that there was no cogent and convincing evidence available on record; therefore, learned JMIC thought it appropriate, not to summon any other person merely on the basis of probability as additional accused. Even this Court also does not find any material on record to that effect; thus, the conclusion drawn by learned JMIC does not warrant any interference.

12. Above all, it is a matter of record that trial against Amandeep Katyal ended on 31.10.2023, resulting into his conviction and sentence in both the cases. As on today, no inquiry or trial is pending against any accused. It is also not in dispute that during trial, petitioner did not challenge the order dated 21.05.2022 for the reasons best known to him and present petition is filed on 22.01.2024 i.e. much after the filing of the appeals by convict-Amandeep Katyal on 08.12.2023.

13. Also noteworthy that Hon'ble the Supreme Court in **Sukhpal Singh Khaira Vs. State of Punjab, (2023) 1 Supreme Court Cases 289**, while dealing with somewhat similar point in Para No.39(i), held as under:-

“39. (I) Whether the trial court has the power under Section 319 CrPC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?”

The power under Section 319 CrPC to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.”

14. In view of the above settled legal proposition by Hon'ble the Supreme Court, if summoning order under Section 319 Cr.P.C is passed either after the order of acquittal or subsequent to imposing sentence in case of conviction, the same will not be sustainable.

It would also be relevant to mention here that in second trial i.e

PCH-1606-2014, there is no challenge to the order dated 21.05.2022, whereby similar application of petitioner under Section 319 Cr.P.C was declined by learned JMIC.

15. Concededly, as on today, no inquiry or trial is pending against any accused; rather, conviction and sentence have already been recorded on 31.10.2023 against above-said Amandeep Katyal. Therefore, in such a scenario, there is no occasion to entertain the petition under Section 482 Cr.P.C against the impugned order dated 21.05.2022.

16. Consequently, there would be no hesitation to observe that present petition is wholly misconceived; hence, the same is liable to be dismissed.

17. Ordered accordingly.

18. It is clarified that observations made above shall not have any bearing on the pending appeals at the instance of convict-Amandeep Katyal.

19. Pending miscellaneous applications, if any, shall also stand disposed off.

01.02.2024
Harish Kumar

(MAHABIR SINGH SINDHU)
JUDGE

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