



CRM-M-2692-2017

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**207 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-2692-2017 O&M)
Date of Decision: 24.09.2024

Anita Rani

..... Petitioner

Versus

UT Chandigarh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Pratap Singh Gill, Advocate,
for the petitioner.

Mr. Yashwant Singh Rathore, Addl. PP, Chandigarh.

Mr. Bipan Ghai, Sr. Advocate with
Mr. Nikhil Ghai, Advocate,
Mr. Tushan Rawal, Advocate and
Mr. P.S. Bindra, Advocate,
for respondents No.2. and 3.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for quashing of the order dated 05.12.2016 passed by learned Judicial Magistrate Ist Class, and order dated 17.01.2017 passed by learned Additional District Judge, whereby the application under Section 319 Cr.P.C. filed by the petitioner-complainant was dismissed.

2. Succinctly, the facts of the case are that FIR in the present case was lodged on the complaint filed by petitioner Anita Rani on the allegations of cheating and forgery. On the conclusion of the investigation, the Investigating Agency filed the challan qua accused Arun Goyal, however, respondents No.2 and 3, namely, Ashok Kumar Goyal and Smt. Vijay Goyal were declared to be innocent. During the trial, the petitioner-complainant filed an application under Section 319 Cr.P.C. for summoning both



respondents No.2 and 3 to face the trial alongwith accused Arun Goyal. Learned trial Court heard both the sides, however, finding no merit in the application filed, dismissed the same vide its order dated 05.12.2016. Aggrieved by the same, the petitioner assailed the order dated 05.12.2016 by way of revision petition before the learned Additional Sessions Judge, Chandigarh. However, learned Additional Sessions Judge also found no infirmity in the view taken by learned trial Court and thus, upheld the order dated 05.12.2016 by dismissing the revision petition filed by the petitioner vide its order dated 17.01.2017. Hence, aggrieved by the concurrent findings of both the Courts below, the petitioner has approached this Court by way of filing the present petition.

3. Learned counsel for the petitioner has vehemently submitted that both the trial Court and the revisional Court have fallen in error in declining the application filed by the petitioner under Section 319 Cr.P.C. for summoning respondents No.2 and 3. He has submitted that respondents No.2 and 3 had played a key role for abetting and alluring the petitioner and her husband to part with hefty amount in the name of alleged business of property dealing. He submits that there are specific allegations against both the respondents No.2 and 3. He submits that huge amount of Rs.54.50 lacs has been got transferred from the joint account of the petitioner and her son to the joint account of Arun Goyal and Ashok Kumar Goyal (respondent No.2) in connivance with each other. He has submitted that learned JMIC had dismissed the application filed by the petitioner primarily on the ground that the same has been filed at the fag end of the trial when the prosecution evidence has already been concluded and the statement of the accused has



been recorded under Section 313 Cr.P.C. It is submitted that application filed under Section 319 Cr.P.C. has not been appreciated by the trial Court as per the facts and circumstances and the law settled. The view taken by learned JMIC was illegally upheld by learned revisional Court as well, who dismissed the revision petition filed by the petitioner vide its impugned order dated 17.01.2017. He has submitted that the statutory power under Section 319 Cr.P.C. is an extraordinary power, which is there to prevent the miscarriage of justice, however, both the Courts below have failed to appreciate the same and thus, rejected the application/revision petition under Section 319 Cr.P.C. filed by the petitioner in a mechanical manner. He has submitted that learned Courts below have failed to appreciate the law settled by Hon'ble Supreme Court in case of **Hardeep Singh vs. State of Punjab and others, (2014) 3 SCC 92** and hence, the impugned orders dated 05.12.2016 and 17.01.2017 declining the application/revision petition under Section 319 Cr.P.C. filed by the petitioner-complainant for summoning the respondents No.2 and 3-accused, deserves to be set aside.

4. Learned Senior Counsel for respondents No.2 and 3 has vehemently opposed the submissions made by counsel for the petitioner. He has submitted that false and frivolous allegations were made by the petitioner while lodging the FIR. He submits that free and fair investigation was carried out and the allegations made by the petitioner were not substantiated on the conclusion of the same and hence, both respondents No.2 and 3 were rightly declared innocent by the Investigating Agency. He submits that after filing of the challan against only one accused named in the FIR, charges were framed and the trial commenced. However, it is apparent



from the record that application under Section 319 Cr.P.C. was filed by the petitioner at the fag end of the trial, when even the statement of the accused under Section 313 Cr.P.C. had already been recorded by the trial Court. He submits that filing of the application at this stage is in itself sufficient to conclude that the same has been filed by the petitioner after due deliberation in a clandestine manner. He submits that the complainant has been examined by the trial Court as PW-4, wherein, she deposed in her examination-in-chief that when she contacted the concerned Bank Manager, he told her that the said amount was withdrawn by Arun Goyal. He submits that in her deposition itself, she did not name both respondents No.2 and 3. He has further submitted that the contentions raised by learned counsel for the petitioner that impugned orders have been passed keeping in view the stage of the trial, is also without any merit, as learned Courts below have dealt with every aspect of the case in view of the law settled. He submits that merits of the case have been duly appreciated and thus, the same has been rightly dismissed by learned trial Court, which has been equally upheld by learned revisional Court as well. He submits that as per law settled in Hardeep Singh's case (supra), the view taken by both the Courts below suffers from no infirmity and hence, the present filed by the petitioner being devoid of merit deserves to be dismissed with costs.

5. Learned counsel for UT Chandigarh has equally opposed the submissions made by counsel for the petitioner. He has also submitted that a threadbare investigation was carried and on the conclusion of the same, the allegations were substantiated only against accused Arun Goyal against whom charge-sheet was filed. However, allegations against respondents



No.2 and 3 were not substantiated and hence, they were rightly declared innocent. He has also argued on the same line that the application under Section 319 Cr.P.C. has been declined on the merits in view of the law settled and there being concurrent findings of both the Courts below, the present petition having no merit, deserves to be dismissed.

6. Heard.

7. After hearing learned counsel for the petitioner and perusing the record, it is deciphered that the petitioner had lodged the FIR, wherein, allegations of cheating and forgery were made against the accused. However, on carrying out the investigation, the allegations against respondents No.2 and 3 were not substantiated and hence, they were kept in column No.2 in the report filed under Section 173 Cr.P.C. On perusal of the record, it is apparent that the petitioner-complainant was examined as PW-4, who deposed that alleged amount was transferred from her account into the account of Arun Goyal. So far respondents No.2 and 3 are concerned, there is no transfer of amount in their accounts. The case of the prosecution is primarily based on the documentary evidence. There are concurrent findings of both the Courts below, who after examining the arguments raised by both the sides, have dismissed the applicant/revision petition filed by the petitioner.

8. To understand the controversy in the case, statutory provisions of Section 319 Cr.P.C. is necessary to be considered, which is reproduced as under:-

“Section 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.”

9. The Constitutional Bench of Hon'ble Supreme Court in Hardeep Singh's case (supra) has held that power under Section 319 Cr.P.C. is discretionary and an extra ordinary power, which is to be exercised sparingly and in those cases where the circumstances so warrant. It should be exercised only where strong and cogent evidence occurs against a person from the evidence led before the Court and such power should be exercised not in a casual and cavalier manner. It has been further held that there is no scope by the Court under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused.

10. From facts and circumstances of the present case, it is apparent that there was no material before the trial Court and the revisional Court, which could be termed as sufficient or more than *prima facie* case made out



for framing of charge for summoning of additional accused as prayed for. Hon'ble Supreme Court has held that the Court should refrain from exercising its power under Section 319 Cr.P.C. in a mechanical manner. It has been held that power under Section 319 Cr.P.C. should be used sparingly in exceptional circumstances.

11. Weighing the facts and circumstances of the present case on the anvil of law settled by the Hon'ble Supreme Court, this Court is of the opinion that the trial Court as well as the revisional Court have rightly declined the application/revision petition for summoning the respondents-accused, as it would be nothing but a futile exercise and would defeat the ends of justice. Resultantly, the present petition is dismissed being devoid of any merit.

(RAJESH BHARDWAJ)
JUDGE

24.09.2024

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Whether Speaking/Reasoned :	Yes/No
Whether Reportable :	Yes/No