

CRM-M-29680-2022
Date of Reserve:05.12.2023
Date of Decision:18.03.2024

...Petitioner

...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Mr. Deepak Goyal, Advocate
for respondent No.2.

N.S.Shekhawat J.

2. As per the case of the prosecution, one FIR No.23 dated 03.02.2016, under Sections 406,420 of IPC, Police Station Samrala, District Ludhiana (Annexure P-1) was registered against Harjit Singh, his wife Paramjit Kaur and Santokh Singh, the petitioner. As per the complainant, Harjit Singh, main accused was the relative of his daughter-in-law and they had good relations with Harjit Singh and his family members. The petitioner is the father of Harjit Singh, the main accused. Harjit Singh was working as a property

dealer and assured the complainant that he would get his land sold on good price and will also purchase a bigger parcel of land for him for the same amount. On the assurance of Harjit Singh, Amar Singh, uncle of the complainant and Gurwinder Singh, son of the complainant had agreed to sell their lands. On 06.06.2014, the complainant side sold its land to Rupinderjit Singh and Gurjit Singh for a sum of Rs.1,23,33,000/-. As per the complainant, the amount of registered sale deed was shown as Rs.47.70 lacs, at the instance of Harjit Singh. However, the actual sale price was Rs.1,23,33,000/-. The cash amount was kept by Harjit Singh and he had said that he would purchase other land for the complainant side. Harjit Singh also gave a sum of Rs.18 lacs to the complainant and his family members out of the said amount and the remaining amount was retained by him. Later on, the amount was kept by Harjit Singh with himself. However, when Harjit Singh did not get the registered sale deed executed in favour of the complainant side; the complainant and other family members visited their house and discussed everything with Santokh Singh, his father and Paramjit Kaur, his wife. Harjit Singh agreed to return the amount and gave two cheques for a sum of Rs.50 lacs each in the name of Amar Singh and promise to get the cheques cleared. However, when Amar Singh presented the said cheques, the cheques were dishonoured, as sufficient amount was not available in the account of Harjit Singh. On this, the complainant along with his uncle and other relatives went to the house of Harjit Singh, where his wife Paramjit Kaur and his father Santokh Singh were also present. The cheques and the memo were taken away by Harjit Singh and he showed to his father, Santokh Singh. Santokh Singh handed over the said cheques and memo to Paramjit Kaur and she took away the cheques and memo inside. When the

complainant requested them to return the cheques and memo, then Harjit Singh brought his licensed revolver and threatened them to leave the place. With these broad allegations, the respondent No.2/complainant had got the FIR registered against Harjit Singh, his wife Paramjit Kaur and his father Santokh Singh (petitioner).

3. After holding the investigation, a report was prepared by Superintendent of Police, Khanna and the petitioner and Paramjit Kaur were found to be innocent. Later on, during the course of trial the statements of PW-1, Ranjit Singh, PW-2, Sumanjot Kaur and PW-3, Gurwinder Singh, son of the complainant was recorded. After recording the Examination-in-Chief of three witnesses, the application under Section 319 Cr.P.C was moved, which was allowed.

4. Learned counsel for the petitioner contends that the petitioner has been falsely involved in the present case, being the father of Harjit Singh, the main accused. In fact, he is resident of United States of America and resides most of the time over there. Even, from the version of the complainant, it was apparent that Harjit Singh was acting as a property dealer and all the transactions had taken place with the intervention of Harjit Singh, who is already facing the prosecution. In the end of the complaint, Annexure P-1, it was alleged that the cheques and memos regarding dishonour of cheques were handed over by the complainant to Harjit Singh and the petitioner was also present there. Harjit Singh, handed over the dishonoured cheques and the memos to the petitioner, who further gave it to wife of Harjit Singh. When the complainant side asked for the dishonoured cheques and memo, Harjit Singh threatened the complainant by pointing his licensed revolver towards him and

asked him to leave. In the present case, Harjit Singh, who was the main accused is already facing the prosecution. Learned counsel further contends that a detailed report was prepared by the Superintendent of Police, Khanna and the petitioner was found innocent. He further contends that while appearing in the witness box, the same story was again narrated by the witnesses, with slightly improved version and the petitioner has been wrongly ordered to be summoned by the Trial Court.

5. On the other hand learned counsel for respondent No.2 submits that the petitioner has been correctly summoned by the Trial Court, as his involvement was shown from the very beginning and had actively connived with his son Harjit Singh. Learned counsel further submitted that PW-1, Ranjit Singh, PW-2 Sumanjot Kaur and PW-3 Gurwinder Singh, son of the complainant had clearly assigned the specific role to the petitioner and after due appreciation of evidence, the petitioner was also arraigned as an accused with Harjit Singh.

6. I have heard learned counsel for the parties and perused the record.

7. The Hon'ble Supreme Court has held in the matter of **Guriya @ Tabassum Tauquir and Ors. Vs. State of Bihar 2007(4) RCR (Criminal) 497:2008 AIR(Supreme Court) 95 as follows:-**

“13. On a careful reading of Section 319 of the Code as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceeding on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the F.I.R. as an accused, but

*not charge sheeted, can also be added to face the trial. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge sheet or the case diary, because such materials contained in the charge sheet or the case diary do not constitute evidence. of course, as evident from the decision reported in **Sohan Lal and others v. State of Rajasthan, 1990(3) RCR (Criminal) 610** the position of an accused who has been discharged stands on a different footing.”*

*“14. Power under Section 319 of the Code can be exercised by the Court suo motu or on an application by someone including accused already before it, if it is satisfied that any person other than accused has committed an offence and he is to be tried together with the accused. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates evidence of witnesses given in Court. Under Sub-section (4)(1)(b) of the aforesaid provision, it is specifically made clear that it will be presumed that newly added person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced. That would show that by virtue of Sub-section (4)(1)(b) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned. (See **Lok Ram v. Nihal Singh and Anr., 2006(2) RCR (Criminal) 707 : 2006(2) Apex Criminal 71.**”*

“15. The factual position noted above goes to show that there was no new material after examination of the accused persons under

Section 313 Criminal Procedure Code, which threw any light on the incident. The evidence of PWs 4 and 5 is not the basis of the application under Section 319 Criminal Procedure Code as they have not spoken anything about the appellants.”

8. The Hon’ble Supreme Court of India has dealt with the issue in hand in a number of judgments and two of the most celebrated judgements in this regard are discussed hereinbelow:-

In “***Michael Machado and another versus Central Bureau of Investigation and another, 2000 (3) SCC 262***”, the Hon’ble Supreme Court of India held as under:-

“11. The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.

12. But even then, what is conferred on the court is only a discretion as could be discerned from the words the court may proceed against such person. The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for, keeping a conspectus

of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons”.

The Hon’ble Supreme Court in ‘**Manjeet Singh versus State of Haryana & others, 2021(4) RCR (Criminal) 25**’, held as under:-

“13. The ratio of the aforesaid decisions on the scope and ambit of the powers of the Court under section 319 Cr.P.C, 1973 can be summarized as under:

- (i) That while exercising the powers under section 319 Cr.P.C, 1973 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;*
- (vi) section 319 Cr.P.C, 1973 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 Cr.P.C, 1973 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, 1973 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 pretrial stage intended to put the process into motion;

(x) the court can exercise the power under section 319 Cr.P.C , 1973 only after the trial proceeds and commences with the recording of the evidence;

(xi) the word "evidence" in section 319 Cr.P.C, 1973 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 Cr.P.C 1973 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 Cr.P.C, 1973 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 Cr.P.C, 1973 can be exercised;

(xv) that power under section 319 Cr.P.C, 1973 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 Cr.P.C, 1973 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 Cr.P.C, 1973 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”.

9. A perusal of Section 319 Cr.P.C. as also the judgment in **Michael Machado case's (supra) and Manjeet Singh's case (supra)** would clearly show that the Court has wide powers to summon a person as an additional accused who has been exonerated by the Investigating Agency, if it finds that there is sufficient evidence available against the said person in order to try him along with the other accused already facing trial. However, there is no compelling duty upon Court to summon an accused. The discretionary power so conferred should only be exercised to achieve justice and must be based on the quality of evidence collected. In fact, the Court being the sole repository of justice, there is a duty cast upon it to uphold the law and ensure that the real accused should not get away by manipulating the Investigating Agency/Prosecuting Agency.

What the Court needs to examine while adjudicating upon an application under Section 319 Cr.P.C. is that there should be evidence available on the file in the shape of oral evidence or documentary evidence in order to invoke its powers to summon an additional accused under Section 319 Cr.P.C.

10. In the present case also, from a perusal of the complaint filed by respondent No.2, it is apparent that no allegations was levelled against the present petitioner that he had ever received any money from Ranjit Singh, complainant or had made any false assurance to him. Even the land was sold by the complainant side with the help of Harjit Singh and the assurance to get a bigger parcel of land was also made by Harjit Singh only. After all the transactions had taken place, the presence of petitioner was shown at the house of Harjit Singh and it was alleged that the petitioner had taken the bounced cheque and memos from Harjit Singh and handed over the same to his wife Paramjit Kaur. In the present case, Harjit Singh is already facing the trial. Thus, at this stage, sufficient evidence was not available before the Trial Court for summoning the present petitioner.

11. In view of the above discussion, the present petition is allowed and the impugned order dated 28.04.2022 (Annexure P-7) passed by the Court of Judicial Magistrate Ist Class, Samrala, is hereby ordered to be quashed.

18.03.2024
hitesh

(N.S.SHEKHAWAT)
JUDGE

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