



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

113

CRR-1886-2024 (O&M)

Date of decision: 26.09.2024

Gurjeet Singh

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Arshpreet Khadial, Advocate for the petitioner.

MANJARI NEHRU KAUL, J.**CRM-38936-2024**

For the reasons mentioned in the application, the same is allowed and delay of 55 days in filing the revision petition is condoned.

CRR-1886-2024

1. The petitioner is challenging order dated 30.04.2024 passed by learned Additional Sessions Judge, Bathinda, vide which the petitioner has been summoned under Section 319 of the Cr.P.C. to face trial as an additional accused, in case FIR No.0098 dated 09.06.2021 under Sections 22-C/61/85 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act') registered at Police Station Kotwali Bathinda, District Bathinda.

2. Learned counsel for the petitioner submits that the learned Trial Court vide impugned order dated 30.04.2024 has erroneously summoned the petitioner to face trial under Section 319 of the Cr.P.C. in the present case. It has been contended that the impugned order has been passed without properly appreciating the evidence in accordance



CRR-1886-2024 (O&M)

with the parameters laid down by Hon'ble the Supreme Court concerning the summoning of an additional accused under Section 319 of the Cr.P.C. as the learned Trial Court failed to take into account that the petitioner was completely innocent and had been falsely implicated in a frivolous case.

3. Learned counsel has further submitted that the FIR annexed as Annexure P-1 was registered against co-accused Jagsir Singh and Kulwant Singh, along side the petitioner. However, on an application filed by the wife of the petitioner to SSP Bathinda, the DSP, Special Crime Branch (hereinafter referred to as 'DSP') conducted an inquiry. Following this inquiry, the petitioner was found innocent and as a result, was not charge sheeted. Furthermore, during the course of the inquiry, the DSP recorded statements of many persons who attested to the good character of the petitioner. Learned counsel has further submitted that the petitioner is a Baptized Sikh, well respected in his community, and does not consume intoxicants. On the 08.06.2021, the petitioner was in Delhi participating in the Kisan Dharna. After receiving a call from his family regarding the death of a relative, he immediately boarded a train back to his home town. The petitioner was not carrying any bag during his return journey to Bathinda, a fact corroborated by some co-passengers and other persons who were well acquainted with the petitioner, and who also deposed qua the same during the inquiry conducted by the DSP. Learned counsel submits that upon his arrival at Bathinda Railway Station, the petitioner met both the co-accused, who were from his village, and they then decided to travel



CRR-1886-2024 (O&M)

together. It was only while travelling back to their village, they were then apprehended by the police, and a recovery of 36000 tablets of Lomotil were then allegedly effected from all the three.

4. Learned counsel for the petitioner maintains that it was the two co-accused Jagsir Singh and Kulwant Singh who were carrying the bag containing the contraband, and the petitioner has been falsely implicated simply because he was in their company at the time of the alleged recovery. Additionally, it has been argued that the petitioner has no previous criminal antecedents, and even during the inquiry, the DSP did not find any incriminating evidence to link him with the recovered contraband.

5. Therefore, a prayer has been made for setting aside the impugned order vide which the petitioner has been erroneously summoned to face trial as an additional accused in the FIR in question.

6. I have heard learned counsel for the petitioner and perused the relevant material on record.

7. As per allegations levelled in the FIR dated 09.06.2021, annexed as Annexure P-1, while on a routine patrol and checking at T-point, Santpura Road, near Sirhind Canal, the police team noticed three persons behaving suspiciously with a black kit bag in their possession. Upon being apprehended and questioned, one of the persons identified himself as Gurjeet Singh (present petitioner). The other two persons were identified as Jagsir Singh and Kulwant Singh. The police party observed that the kit bag was open, revealing strips of intoxicant pills inside.



CRR-1886-2024 (O&M)

8. In the given situation, ASI Balwant Singh requested a senior officer to come at the spot. SI/SHO thereafter arrived at the scene. Despite earnest efforts to involve an independent witnesses, none could be located, so the three men, including the petitioner, were informed that their kit bag and their person would have to be searched. The three accused, including the petitioner, consented to the search being conducted by the police at the spot. Upon searching the bag, 36000 intoxicant pills of Lomotil were recovered, packaged in 600 strips, each containing 60 pills. These strips were marked with a batch number, manufacturing date, and expiry date.

9. Additionally, upon searching the petitioner, Rs.200/- was found in his possession. None of the accused, including the petitioner, could provide a licence or permit for possessing such a large quantity of intoxicant pills. Consequently, the FIR in question was then registered against the petitioner and the other accused, under Sections 22-C/61/85 of the NDPS Act, for being found in illegal possession of a substantial quantity of intoxicant tablets.

10. It is imperative to emphasize that the discretionary powers conferred upon a Court under Section 319 of the Cr.P.C. must be exercised judiciously and sparingly. These powers under Section 319 of the Cr.P.C. allow the Court, upon discovering strong and compelling evidence that points to the complicity of a person in the crime in question, to summon such person as an additional accused. Hon'ble the Supreme Court through its various judicial pronouncements including

Hardeep Singh Vs. State of Punjab, (Constitution Bench) : 2014(3)



CRR-1886-2024 (O&M)

SCC 92 has clearly laid down the parameters for invoking the provisions of Section 319 of the Cr.P.C., emphasizing that the evidentiary standard for summoning an accused under this Section is higher than mere prima facie case required at the stage of framing of charges. However, it is lower than the threshold necessary for conviction. Specifically, it has been emphasized by Hon'ble the Supreme Court that the evidence must be such that, if left unchallenged, it would likely result in a conviction. Therefore, only after a thorough consideration of the substance of the evidence led should a Court decide to summon a person as an additional accused under Section 319 of the Cr.P.C. In the above background, it would be also relevant to outline the following parameters laid down by Hon'ble the Supreme Court in ***Hardeep Singh's case (supra)***:-

“98. Power under Section 319 Cr.P.C. is a discretionary and an extra- ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

99. 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



CRR-1886-2024 (O&M)

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.”

11. Adverting to the present case, the prosecution version at the first instance was that on 09.06.2021, the police party led by ASI PW2, Balwant Singh encountered three persons-the petitioner and his two co-accused Jagsir Singh and Kulwant Singh, who were seated together under suspicious circumstances and holding black bag containing intoxicant tablets. After following the prescribed procedure, including procedure under Section 50 of the NDPS Act, a search was conducted leading to recovery of a huge quantity i.e. 36000 of intoxicant tablets (Lomotil) from the bag. All necessary documentation, including recovery memos, persona search memos and arrest memos, were prepared in the presence of the three accused, including the petitioner, with their signatures affixed to these documents. Despite this prima facie evidence linking the petitioner along with the co-accused to the contraband, an application by the wife of the petitioner to the DSP concerned prompted the DSP to conduct an inquiry. During his inquiry, the DSP joined co-passengers who purportedly had travelled with the petitioner on his return journey from Delhi in a train to Bathinda, co-villagers, and the officials who were part of the police party which had apprehended the petitioner and the co-accused with the alleged contraband. The inquiry by the DSP concluded that the petitioner was innocent and had no involvement in the commission of the offence.



CRR-1886-2024 (O&M)

12. The inquiry carried out by the DSP, initiated on the basis of an application by the wife of the petitioner, is baffling, especially in light of the fact that the police officials who apprehended all three accused, including the petitioner, consistently reiterated the details as recorded in the FIR. The rationale behind the inquiry, particularly when it contradicted the statements of the officials directly involved in the apprehension of the accused, including the petitioner, raises serious doubts about its credibility and validity. Furthermore and pertinently while deposing as PW2, ASI Balwant Singh (complainant) reiterated the allegations contained in the FIR in question.

13. Learned counsel for the petitioner has vehemently argued that the statements made by co-passengers and co-villagers—who claimed that the petitioner was not carrying any bag when he boarded the train for his return journey—along with testimonies vouching for the petitioner's character and abstinence from intoxicants, were sufficient grounds for the DSP to rightly absolve the petitioner. However, these arguments, at best, represent the defence of the petitioner and did not warrant his exoneration by the DSP concerned. Furthermore, the arguments containing the petitioner's alleged false implication and his professed innocence are matters to be appreciated and evaluated during the trial. The learned Trial Court, in due course, will appreciate and assess all the contentions of the petitioner, based on the evidence presented during the trial which would also then be tested on the touchstone of cross examination.

14. As a sequel to the above, this Court is of the view that the



CRR-1886-2024 (O&M)

impugned order does not warrant any interference. Accordingly, the instant petition stands dismissed.

15. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

26.09.2024

Vinay

**(MANJARI NEHRU KAUL)
JUDGE**

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