

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-32207 of 2017
Date of Decision: February 01, 2024

Kashmir Singh and others

.....Petitioners

versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARPREET SINGH BRAR

Present:- Mr. Prateek Sodhi, Advocate
for the petitioners

Mr. Subhash Godara, Addl. A.G. Punjab

Harpreet Singh Brar, J. (Oral)

1. Prayer in the present petition filed under Section 482 Cr.P.C. is for quashing of order dated 18.02.2016 (Annexure P-7) passed by Sub Divisional Judicial Magistrate, Ajnala vide which the petitioners were summoned under Section 319 Cr.P.C. to face trial as additional accused in FIR No. 63 of 2010 registered under Sections 420, 467, 468, 471 and 120-B IPC at Police Station Ajnala as well as order dated 14.07.2017 (Annexure P-9) passed by the revisional Court whereby the revision filed by the petitioners was dismissed.
2. Learned counsel for the petitioners *inter alia* contends that the finding recorded by learned trial Court as well as revisional Court that the FIR was registered against the petitioners is erroneous. Infact, the FIR was not registered against the petitioners and even they were not placed in column No. 2 in the final report filed by the investigating agency under Section 173

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Cr.P.C. The petitioners have been summoned merely on the statement made by respondent No. 2 as PW-1. Learned trial Court as well as revisional Court have failed to appreciate that the deposition of respondent No. 2 as PW-1 does not make out a case to satisfy the principle of more than *prima facie* case for exercising the extraordinary power under Section 319 Cr.P.C. He further submits that only vague allegations are made without specifying the exact role placed by the petitioners by respondent No. 2. Learned counsel for the petitioners has relied upon judgment passed by Hon'ble Supreme Court in ***Sarabjit Singh and another vs. State of Punjab and another, 2009(3) RCR(Criminal) 388***, wherein the following has been observed:-

“16. We have noticed hereinbefore that Mohd. Shafi (supra) has been explained in Lal Suraj (supra) holding that a power under Section 319 of the Code can be exercised only on the basis of fresh evidence brought before it and not on the basis of the materials which had been collected during investigation particularly when a final form was submitted and the same had been accepted by the Magistrate concerned. There is no gainsaying that the power under Section 319 of the Code is an extraordinary power which in terms of the decision of this Court in Municipal Corporation of Delhi (supra) is required to be exercised sparingly and if compelling reasons exist for taking cognizance against whom action has not been taken.

17. The provision of Section 319 of the Code, on a plain reading, provides that such an extraordinary case has been made out must appear to the court. Has the criterion laid down by this Court in Municipal Corporation of Delhi (supra) been satisfied is the question? Indisputably, before an additional accused can be summoned for standing trial, the nature of the evidence should be such which would make out grounds for exercise of extraordinary

power. The materials brought before the court must also be such which would satisfy the court that it is one of those cases where its jurisdiction should be exercised sparingly.”

3. Learned State counsel has filed short reply dated 01.02.2024 by way of affidavit of Sh. Raj Kumar, PPS, Deputy Superintendent of Police, Sub-Division Ajnala, Amritsar (Rural) Assistant Commissioner of Police, North, Amritsar on behalf of respondent No. 1 in the Court today. The same is taken on record. Copy thereof has been supplied to learned counsel for the petitioners.

4. Per contra, learned State counsel submits that both the Courts below have considered the statement of PW-1 in the right perspective and has exercised the power under Section 319 Cr.P.C. on the basis of material available on record and the present petition is in the shape of second revision where the scope of interference is very limited.

5. Having heard learned counsel for the parties and after perusing the record, this Court finds force in the arguments raised by learned counsel for the petitioners. There is no material available on record to indicate the complicity of the petitioners in the present case. Admittedly, the petitioners were not nominated as accused in the FIR nor they have been sent for trial or placed in column No. 2 of the final report filed under Section 173 Cr.P.C. and in the absence of any fresh material or cogent reason, the learned trial Court as well as the revision Court has fallen into error by summoning the petitioners as additional accused. Both the Courts below have failed to satisfy the test of more than *prima facie* case at the time of framing of charge as culled out by Constitution Bench of the Hon'ble Supreme Court in ***Hardeep Singh vs. State of Punjab and others, 2008(4) RCR(Criminal) 947.***

6. The trial Court must evaluate the material against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible material, the power under Section 319 Cr.P.C. ought not to be invoked. A two Judge Bench of the Hon'ble Supreme Court in ***Juhru and others Vs. Karim and another (2023) 5 SCC 406*** speaking through Justice Surya Kant, while relying upon ***Hardeep Singh's case (supra)*** has held as under:-

“16. It is, thus, manifested from a conjoint reading of the cited decision that power of summoning under Section 319 CrPC is not to be exercised routinely and the existence of more than prima facie case is sine qua non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 CrPC, and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 CrPC ought not to be invoked.”

7. Accordingly, the present petition is allowed and the impugned orders dated 18.02.2016 (Annexure P-7) and 14.07.2017 (Annexure P-9) are quashed.

(HARPREET SINGH BRAR)
JUDGE

February 01, 2024

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