

205 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-53998-2023
Date of decision: 20.02.2024

Jaspreet SinghPetitioner

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Rajvir Singh, Advocate
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. seeking quashing of order dated 15.09.2023 (Annexure P-13) passed by the Court of learned Additional Sessions Judge, Shaheed Bhagat Singh Nagar allowing the revision filed by respondent No.2 against the order dated 13.07.2023 passed by the Sub Divisional Judicial Magistrate, Balachaur, SBS Nagar (Annexure P-12) in FIR No.48 dated 25.08.2014 under Sections 406/420/467/468/471/120-B of IPC registered at Police Station Kathgarh, District SBS, whereby, respondent No.2 was summoned as an additional accused under Section 319 Cr.P.C.

FACTUAL MATRIX

2. The FIR was lodged on the allegations that the father of the petitioner had an ancestral property at Village Chaun Majra, District Mohali

which was acquired by the GMADA and father of the petitioner received Rs.1,24,00,000/- from the State Government as a share in the above said property and further with the intention to invest the same in a property, the father of the petitioner has been duped by a gang to the tune of Rs.1,07,00,000/- and thereafter, the above mentioned FIR was lodged.

CONTENTIONS

3. Learned counsel for the petitioner *inter alia* contends that the impugned order was passed by the learned Revisional Court against the settled law and against the facts of the case. The finding recorded by the learned Revisional Court is contrary to the facts. It has been duly established that respondent No.2 is part of the conspiracy. The father of the petitioner has given a representation dated 12.02.2015 (Annexure P-2) to the jurisdictional police authorities before filing of the final report under Section 173 Cr.P.C. by specifically naming respondent No.2 and stating therein that out of the total amount of cheating, Rs.6,90,000/- was transferred in the bank account of respondent No.2 by her husband-Dharam Pal. However, the Investigating Agency at the time of filing the final report has not sent respondent No.2 for trial as an accused. Thereafter, the petitioner stepped into the witness box and his statement as PW-1 has been recorded on 18.09.2023 where the petitioner categorically reiterated the allegations against respondent No.2 with regard to deposit of Rs.6,90,000/- in her account by the main accused-Dharam Pal and the learned trial Court on the basis of material available on record has summoned respondent No.2 as an additional accused under Section 319 Cr.P.C. vide order dated 13.07.2022 (Annexure P-12). The learned Revisional Court has allowed the revision filed by respondent No.2 without considering the actual facts and circumstances of the case and passed the impugned order

against the settled law.

4. On the other hand, the learned State counsel reiterates the facts of the case, however, on instructions from ASI Prem Nath, he could not controvert the fact that respondent No.2 was neither challaned nor her name was placed in Column No.2 of the final report under Section 173 Cr.P.C.

OBSERVATION AND ANALYSIS

5. Before proceeding further, it is pertinent to discuss the perspicuous observations made by the Hon'ble Supreme Court in some of its recent judgments. Discussing the scope of Section 319 Cr.P.C., the Constitution Bench of Hon'ble Supreme Court in case titled **Hardeep Singh Vs. State of Punjab, SC 2014(1) RCR (Criminal) 623** has laid down that:

"105. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary 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.

106. 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 unrebutted, 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 of-

fence" is clear from the 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."

6. Hon'ble Supreme Court in **Brijendra Singh and Others Vs. State of Rajasthan, (2017) 7 SCC 706**, while summing up the ratio as laid down in **Hardeep Singh's case (supra)** has held as under:

"Power under Section 319 Cr.P.C. can be exercised by the trial Court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial Court finds that there is some 'evidence' against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The 'evidence' herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect - of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima-facie opinion which is to be formed requires stronger evidence than mere probability of his complicity."

7. Hon'ble Supreme Court later in 2019 relying on **Hardeep Singh (supra)** held in **Periyasami and Others Vs. S.Nallasamy (2019) SCC Online SC 379** that:

"The additional accused cannot be summoned under Section 319 of the Code in casual and cavalier manner in the absence of strong and cogent evidence. Under Section 319 of the Code additional accused can be summoned only if there is more than prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of conclusion of the trial convicting the accused."

8. Again Hon'ble Supreme Court in the case of **Sagar Vs. State of Uttar Pradesh and another Criminal Appeal No. 397 of 2022 (Arising out of SLP(Crl) No.7373 of 2021)**, referring to **Hardeep Singh (supra)** laid down that:

"The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above 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 unrebutted, would lead to conviction."

9. Recently Hon'ble Supreme Court in case of **Juhru & Ors. Versus Karim & Anr. 2023 AIR (Supreme Court) 1160** observing the scope of section 319 Cr.P.C held that:

"It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a prima-facie case is sine quo 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 Cr.P.C.,

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 is, 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 Cr.P.C. ought not to be invoked.”

10. Having heard the learned counsel for the parties and after perusing the record, it transpires that name of respondent No.2 was not mentioned in the initial complaint moved by the petitioner and the FIR (*supra*) was registered on the basis of inquiry conducted. Even during the detailed investigation conducted by the Economic Offences Wing, nothing incriminating has surfaced against respondent No.2. The learned Revisional Court has examined the facts and circumstances of the case in the right manner and has concluded that respondent No.2 cannot be summoned only on the basis of transfer of Rs.6,90,000/- by her husband-Dharam Pal and it has been concluded that mere transfer of money by her husband does not establish her conspiracy or connivance in the offence allegedly committed by other co-accused. Even in the deposition of the petitioner, there is nothing with regard to the involvement of respondent No.2 in cheating the petitioner. Respondent No.2 is neither signatory of any agreement to sell nor there is any other material to indicate that she has played any role in the commission of the alleged offence and the impugned order under challenge was passed after satisfying the test of more than *prima facie* case as culled out by the Constitution Bench in ‘Hardeep Singh Vs. State of Punjab’ (*Supra*) and it is a settled law that the power under

Section 319 Cr.P.C. cannot be exercised in a routine manner and the essential element of existence of more than *prima facie* case is required.

CONCLUSION

11. After the reasoned analysis of the facts and circumstances of the case and in view of the above discussion, this Court finds that the impugned order dated 15.09.2023 (Annexure P-13) is passed in conformity with the binding judicial dictums and no ground is made out for setting aside the same.

12. Thus, the present petition is accordingly dismissed being devoid of any merit.

(HARPREET SINGH BRAR)
JUDGE

20.02.2024
Neha

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