

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).743/2017

(Arising out of Special Leave Petition(Crl.) No(s). 2721/2017)

PARTIBHA

APPELLANT (s)

VERSUS

STATE OF HARYANA AND ANR.

RESPONDENT (s)

O R D E R

Leave granted.

This appeal has been filed against the judgment and order of Punjab and Haryana High Court dated 10.01.2017. The High Court vide impugned judgment has allowed the application filed by respondent no. 2 under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') by setting aside the order dated 06.01.2015 passed by the Judicial Magistrate (Ist Class), Rohtak summoning respondent no. 2 as an additional accused as well as order of the Additional Sessions Judge, Rohtak dated 01.06.2015 dismissing the revision filed by respondent no. 2.

The appellant lodged a complaint dated 03.04.2010 under Sections 106, 341, 420, 506 and 341 of the Indian Penal Code, 1860 (IPC), which was forwarded by the office of Inspector General of Police to the Police Station, Civil Lines, Rohtak. After investigation final report was submitted by the police. The charge

sheet was submitted by the police against Subhash and respondent no. 2/Sunita was kept in Column No. 2 and was not arrested. The trial proceeded before the Trial Court. The statement of the appellant, who was the complainant, was recorded on 27.5.2014. An application dated 25.11.2014 was filed by the appellant under Section 319 Cr.P.C. for summoning respondent no. 2 to face the trial. The learned Magistrate heard the application of the appellant and by order dated 06.01.2015 allowed the application and summoned respondent no. 2. Against the order dated 06.01.2015, criminal revision was filed by respondent no. 2 before the Court of Additional Sessions Judge, Rohtak. Learned Additional Sessions Judge, Rohtak after hearing the parties upheld the order passed by the Magistrate summoning respondent no. 2 by dismissing the revision. Aggrieved against the order of Additional Sessions Judge, an application under Section 482 Cr.P.C. was filed. The High Court vide its impugned judgment had allowed the said application and quashed the orders passed by the Magistrate as well as Additional Sessions Judge. Aggrieved by the said order the appellant (Complainant) is before us.

Learned counsel appearing for the appellant contends that requirement as mentioned under Section 319 Cr.P.C. is fully complied with and the Magistrate as well as Additional Sessions Judge after considering the facts of the present case has allowed the said application. It is contended that the statement of the complainant was also recorded in the Court in which the detailed allegations and role of respondent no. 2 were mentioned on the basis of which the Court being satisfied has rightly summoned

respondent no.2. The High Court committed an error in setting aside the orders of the Magistrate as well as Additional Sessions Judge. It is submitted that the High Court has not specifically adverted to the statement of the complainant, which was sufficient for summoning respondent no.2. The learned counsel for the respondents who has appeared on caveat contends that the order of the High Court was justified. There was no allegation against respondent no.2 in the First Information Report (FIR) and allegations are mainly against Subhash. He submits that the conditions enumerated under Section 319 Cr.P.C. were not fulfilled, in the facts of the present case.

We have considered the submissions of the learned counsel for the parties and perused the record.

In the present case, the appellant/complainant had filed a complaint alleging commission of offence against both Subhash and his wife Sunita/respondent no.2. The police after carrying out the investigation has submitted a report to the Court in which the name of Sunita was mentioned in Column No. 2. After framing of charges against Subhash, the statement of complainant (PW-1) was recorded on 27.05.2014 by the Magistrate. A copy of the said statement has been brought on record as Annexure-P3. The statement of other prosecution witnesses were also recorded by the Court. The application under Section 319 Cr.P.C. was filed after recording of the statement of the complainant in the Court as PW-1. The learned Magistrate after taking into consideration the statement as recorded before the court as well as other materials came to the conclusion that there is sufficient material to summon respondent

no. 2. In paragraph no. 5 the Magistrate stated as follows:

"On the perusal of complaint, statement recorded under Section 161 Cr.P.C. of the complainant as well as of other witnesses and examination in chief of complainant Pratibha, it appears that Sunita has actively participated along with main accused in the commission of the alleged offences. Therefore, in view of her role she is also liable to be summoned to face trial u/s 319 Cr.P.C. In view of my aforesaid discussion the present application is hereby allowed.

The Revision Court after hearing the learned counsel for the parties has come to the conclusion that the evidence produced by the prosecution during the trial is enough to form an opinion that Sunita/respondent no. 2 has committed the alleged offences.

The High Court has set aside the aforesaid orders. The High Court took the view that in the FIR the allegations are mainly against Subhash and name of Sunita has not been mentioned in the body of the FIR. The High Court further observed that in his statement recorded under Section 161 Cr.P.C and the statement made in the Court specifying the role of respondent no. 2 amounts to material improvement. The High Court came to the conclusion that the order summoning respondent no. 2 is not as per law.

The ambit and scope of exercise of powers under Section 319 Cr.P.C. has been considered by the Constitution Bench of this Court in Hardeep Singh vs. State of Punjab & Ors. (2014) 3 SCC 92. It is useful to extract paras 89 & 90 of the judgment wherein following has been held:

"89. We have given our thoughtful consideration to the diverse views expressed in the aforementioned cases. Once examination-in-chief is conducted, the statement becomes part of the record. It is

evidence as per law and in the true sense, for at best, it may be rebuttable. An evidence being rebutted or controverted becomes a matter of consideration, relevance and belief, which is the stage of judgment by the court. Yet it is evidence and it is material on the basis whereof the court can come to a prima facie opinion as to complicity of some other person who may be connected with the offence.

90. As held in Mohd. Shafi and Harbhajan Singh, all that is required for the exercise of the power under Section 319 Cr.P.C. is that, it must appear to the court that some other person also who is not facing the trial, may also have been involved in the offence. The pre-requisite for the exercise of this power is similar to the prima facie view which the magistrate must come to in order to take cognizance of the offence. Therefore, no straight-jacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, 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. and can proceed against such other person(s). It is essential to note that the Section also uses the words 'such person could be tried' instead of should be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of sub-section 4 of Section 319 Cr.P.C., the person would be entitled to a fresh trial where he would have all the rights including the right to cross examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same. Therefore, even on the basis of Examination- in-Chief, the Court or the Magistrate can proceed against a person as long as the court is satisfied that the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial. In fact, Examination-in-Chief untested by Cross Examination, undoubtedly in itself, is an evidence."

Admittedly, the statement of the Complainant (PW-1) has already been recorded on 27.05.2014. There are allegations against respondent no. 2 in the statement of PW-1. The view of the High Court is that when the allegations are not made in the FIR, any statement under Section 161 Cr.P.C or the statement made before the Court making allegations against respondent no. 2 are nothing but material improvement. There are two reasons due to which the above view of the High Court cannot be approved in the facts of the present case. In the present case, in the written complaints sent by the appellant, allegations were made both against respondent no. 2 and Subhash. Secondly, in the statement made before the Court, specific allegations have been made against respondent no. 2 elaborating the role played by her. There are allegations against respondent no. 2 in the statement recorded in the court, which can very well form the basis for an order under Section 319 Cr.P.C. The mere fact that the FIR did not mention about the sequence of the events cannot be a reason for ignoring the specific oral evidence given by the complainant before the Court. The FIR which has been registered by the police filed as Annexure-P1 itself refers to earlier complaint sent by the complainant both against respondent no. 2 and Subhash. The reference of earlier complaint given by the complainant has been mentioned in Annexure-P1.

In view of the law laid down by this Court in Hardeep Singh (supra), the statement recorded before the court can be relied. Examination-in-Chief of a witness can be relied for exercising the power under Section 319 Cr.P.C. even though cross-examination is not completed. We are of the view that the Magistrate did not

commit any error in summoning the accused and there was no valid ground for exercise of power under Section 482 Cr.P.C. by the High Court in setting aside the orders passed by the Magistrate as well as Additional Sessions Judge. We are, thus, of the view that the order dated 10.01.2017 is unsustainable. In result, the appeal is allowed and the judgment and order dated 10.01.2017 of the High Court is set aside.

.....J.
[A.K. SIKRI]

.....J.
[ASHOK BHUSHAN]

NEW DELHI;
APRIL 10, 2017.

ITEM NO.12

COURT NO.8

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 2721/2017

(Arising out of impugned final judgment and order dated 10/01/2017
in CRM No. 24753/2015 passed by the High Court Of Punjab & Haryana
At Chandigarh)

PARTIBHA

Petitioner(s)

VERSUS

STATE OF HARYANA AND ANR

Respondent(s)

(WITH APPLN. (S) FOR EXEMPTION FROM FILING O.T. AND INTERIM RELIEF)

Date : 10/04/2017 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHANFor Petitioner(s) Mr. Pardeep Gupta, Adv.
Mr. Parinav Gupta, Adv.
Ms. Mansi Gupta, Adv.
Dr. (Mrs.) Vipin Gupta, Adv.For Respondent(s) Mr. Anil Hooda, Adv.
Mr. Kaushal Yadav, Adv.UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, stands disposed of
accordingly.(Ashwani Thakur)
COURT MASTER(Mala Kumari Sharma)
COURT MASTER

(Signed order is placed on the file)