(2019) 07 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Petition (M) No. 6135 Of 2018

Ufipl Infrastructure Limited — APPELLANT

Vs

State Of Haryana And Another — RESPONDENT

Date of Decision : 01-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 82, 83, 173, 173(8), 319, 482
Indian Penal Code, 1860 — Section 120B, 406, 420, 465, 467, 468, 471

Citation : (2019) 07 P&H CK 0028

Hon'ble Judges : Manoj Bajaj, J

Bench : Single Bench

Advocate : Kanwaljit Singh, Ashish Soi, Avijit Singh, Nischal Mann, Sanjeev Aggarwal

Final Decision : Dismissed

Judgement

Manoj Bajaj J

Petitioner has filed this petition under Section 482 Cr.P.C. to challenge the revisional Court order dated 16.1.2018 (Annexure P-6) passed by the

Additional Sessions Judge, Karnal, whereby it has reversed the Summoning order dated 02.8.2017 under Section 319 Cr.P.C. passed by the trial Court

and proceeded to dismiss the application under Section 319 Cr.P.C. filed by the prosecution in case FIR No.263 dated 14.3.2009, under Sections 406,

420, 465, 467, 468, 471 and 120-B IPC, registered at Police Station Karnal Civil Lines, Karnal.

The facts leading to the present petition are noticed below :-

(i) Upon a complaint moved by Vikas Mallan s/o Ram Parsad Mallan, the FIR No.263 dated 14.3.2009 under Sections 406, 420, 465, 467, 468, 471

and 120-B IPC, was registered at Police Station Karnal, Civil Lines, District

Karnal. It was alleged that the complainant was Power of Attorney

holder on behalf of M/s UFIPL Insfrastructure Limited and was duly authorized to file the present complaint, which was given against three persons,

namely, (i) Vishal Gupta s/o Omparkash Gupta; (ii) Bhavana Gupta w/o Vishal Gupta; and (iii) Vinod Saini s/o Rajender Kumar Saini. According to

the complainant, Vishal Gupta and Bhavana Gupta were shareholders of the company and as the company wanted to set up an infrastructure project,

therefore it authorized Vishal Gupta (Director) for procuring the land for the said purpose. An agreement to sell (dated 14.7.2008) in respect of a land

measuring approximately 43 Kanals (two pieces of land, 14 Kanals 5 Marlas and 21 Kanals 12 Marlas situated in the revenue estate of village Uchana

and one piece of land 7 Kanals 16 Marlas situated in the revenue estate of Village Jhanjari, Tehsil & District Karnal) was executed with Vinod Saini

for a total sale consideration of Rs.10.75 crores. A sum of Rs.4.75 crores was paid by the company to Vinod Saini as part consideration and the sale

deed was to be executed on 05.1.2009. On the said date the complainant had asked Vishal Gupta to get the sale deed executed with Vinod Saini,

however, the same was not executed as Vinod Saini was not available. Thereafter, the other Directors of the company got suspicious and came to

know that Vinod Saini did not hold any power of attorney to execute the said agreement to sell dated 14.7.2008 with UFPIL and therefore it was a

clear case of cheating and forgery by Vinod Saini. It was further narrated in the complaint that Vinod Saini clearly mentioned the fact in the

agreement that he was the power of attorney holder of Mr. Ram Niwas Jindal s/o Lal Chand, whereas no such power of attorney existed. According

to the complainant, both Vishal Gupta and Bhavana Gupta entered into a criminal conspiracy along with a long time employee of the company, namely,

Vinod Saini to commit the offence of cheating. It was alleged that Vishal Gupta had in fact struck a deal with Mr. Ram Niwas Jindal for the same

land at a price of Rs.1.25 crores per acre, however, he got an agreement to sell executed in the name of Vinod Saini at a price of Rs.1.97 crores per

acre, thereby cheating the company to the tune of Rs.72 lakhs per acre. It was alleged that Vishal Gupta was fully aware that Vinod Saini did not hold

any power of attorney for the land mentioned in the agreement, but still executed the agreement on behalf of the company. The allegations of connivance were levelled against all the three accused persons.

After registration of the FIR, the investigation was carried out by the police and the final report under Section 173 Cr.P.C. was submitted on

21.11.2009 against all the three accused persons named in the FIR. However, subsequently, an application was filed on 30.4.2011 seeking permission

for further investigation in the case was allowed by the trial Court, thereby permitting the further investigation. It may be noticed here that the

ownership of the land was not mentioned in the FIR, however, it was owned by Rajender Kumar Somany and Sandip Somany as co-sharers. The

grievance of the complainant expanded as the said land was sold by way of three different sale deeds by M/s Golden Moments Private Limited, on the

basis of power of attorney No.7709/4 dated 01.9.2008. During further investigation, it was found that the alleged power of attorney No.7709/4 dated

01.9.2008 was a forged instrument, which had been used at Karnal and few sale deeds were executed within the jurisdiction of Karnal. On the

strength of further investigation, the supplementary charge-sheet dated 11.3.2014, under Section 173(8) Cr.P.C. was filed against Krishan Lal Taneja,

Rajinder Kumar Somany, Sandip Somany, Soniya Gupta, Sarita Taklroo, Ram Niwas Jindal and Raj Kumar. In this way, after further investigation, in

all ten accused were sent to face trial in the above mentioned FIR.

At the stage, when the case was pending before the trial Court for framing of charges, a Memorandum of Understanding (MOU) dated 17.11.2013

was executed between accused Rajender Kumar Somany, Sandeep Somany (first party) and M/s UFIPL Infrastructure Limited (second party),

whereby the first party undertook to pay a sum of Rs.10 crores to the second party towards full and final settlement of all the disputes and the details

of the payment made was also given in the said MOU. The civil suit for specific performance of the contract and in the alternative refund of Rs.4.75

crores, filed by the Company was also agreed to be withdrawn.

The accused namely Sandip Somany, Rajender Kumar Somany and Ram Niwas Jindal had filed three separate petitions bearing CRM-M-8431-2014,

CRM-M-8432-2014 and CRM-M-37933-2014 respectively before this Court for quashing of FIR (Annexure P-1) on the strength of MOU and this

Court vide common decision dated 23.2.2016 allowed the petitions and quashed the FIR (Annexure P-1) qua petitioners therein. The said decision dated 23.2.2016 was challenged by way of SLP before the Hon'ble Supreme Court of India by the Company but the same was dismissed vide order

dated 26.8.2016.

(ii) Respondent No.2 namely Satpal Chauhan s/o Jai Singh Chauhan was stated to be a witness to the agreement to sell dated 14.7.2008, and was also

required in the investigation. As per complainant, a sum of Rs.9 lakhs was paid to him and though the proceedings under Section 82/83 Cr.P.C. were

initiated against him, however, subsequently he joined the investigation. It was explained by Satpal Chauhan that he had borrowed a sum of Rs.9 lakhs

on interest which was returned by him along with interest of Rs.81,000/- and in the inquiry nothing was found against him muchless to suggest any

criminal conspiracy, resultantly, he was declared innocent by the police. Thereafter the application was moved before the trial Court seeking

permission for cancellation of proclamation proceedings against respondent No.2-Satpal Chauhan. The Judicial Magistrate 1st Class, Karnal vide order

dated 24.3.2017 (Annexure P-1) recorded the stand of the prosecution and allowed the said application thereby dropping the proceedings under

Section 82/83 Cr.P.C. against him. On the same date, the charges against other accused were framed and the trial commenced.

(iii) After framing of the charges, the prosecution adduced its evidence and examined three witnesses, namely, Sushil Nagpal, SI Jagan Nath and

Vikas Mallan. On the basis of the evidence adduced by the prosecution, an application under Section 319 Cr.P.C. was moved for summoning of

Rajender Kumar Somany, Sandip Somany, Ram Niwas Jindal and Satpal Chauhan as additional accused in the said trial. However, the said application

was pressed only in respect of respondent No.2-Satpal Chauhan and the claim was given up for the rest of persons.

(iv) The trial Court after examining the material on record proceeded to summon respondent No.2 as an additional accused to face trial in the FIR

(Annexure P-1) vide its order dated 02.8.2017. Dissatisfied with the said decision dated 02.8.2017 a revision petition was carried before the Court of

Additional Sessions Judge, Karnal and the same was accepted vide order dated 16.1.2018 (Annexure P-6). The complainant Company has preferred

the present petition challenging the order dated 16.1.2018.

Learned senior counsel appearing on behbalf of complainant Company has contended that the order passed by the trial Court is well reasoned and

therefore, the revisional Court has exceeded its jurisdiction in reversing the same. It is vehemently argued that a sum of Rs. 9 lakhs was paid by Vinod

Saini to respondent No.2, who was also a signatory to the agreement to sell dated 14.7.2008 and therefore, his involvement was established in the

crime. It is contended that he was an accused from the very beginning and the Court had even initiated the proceedings against him under Section

82/83 Cr.P.C. to secure his presence and according to him the reasons adopted by the revisional Court in setting aside the order are erroneous in law,

as it would be a matter of evidence as to whether respondent No.2 had obtained the loan as alleged, which was returned along with interest. Learned

senior counsel has contended that the facts and circumstances of the case and the material on record suggests that there is enough evidence against

respondent No.2 indicating his involvement in the offence, and therefore, the power under Section 319 Cr.P.C. was rightly exercised by the trial

Court. It is prayed that the order passed by the revisionary Court be set aside and the order of the trial Court be restored.

On the other hand, prayer is opposed by learned counsel appearing on behalf of respondent No.2. It is pointed out that respondent No.2 was neither

named in the FIR nor was the beneficiary of the said agreement to sell executed between complainant and Vinod Saini. It is contended that

respondent No.2 was simply an attesting witness to the agreement ot sell dated 14.7.2008. Learned counsel has further contended that the case set up

by the complainant is clear, who specifically alleged the conspiracy amongst Vishal Gupta, Bhavana Gupta and Vinod Saini, who were the share

holders and employee of the complainant Company respectively and even the earnest money was paid in the account of Vinod Saini. It is vehemently

pointed out that once the complainant Company has received a sum of Rs.10 crores from the owners of the land in question and the FIR against those

accused persons stands quashed, nothing survives pursuant to the agreement to sell, particularly when the civil suit brought by petitioner Company was

also withdrawn.

Learned counsel for respondent No.2 has further drawn the attention of the Court to the order dated 24.3.2017 to contend that the investigating

agency found the respondent No.2 as innocent and the Court had also put its seal to it. According to him the said order amounts to discharge and

therefore the provisions under Section 319 Cr.P.C. could not have been invoked and prayed that the petition deserves to be dismissed.

At this stage, learned senior counsel appearing on behalf of petitioner-Company has contended that even if a person is discharged, the provisions of

Section 319 Cr.P.C. can be invoked if the required material exists. Reliance has been placed upon Deepu @ Deepak vs. State of Madhya Pradesh

2019 AIR (SC) 265 to contend that there is no bar to proceed against the accused under Section 319 Cr.P.C. after discharge of the accused.

After hearing learned counsel for the parties, it will be appropriate to deal with the caveat of respondent No.2 regarding maintainability of application

under Section 319 Cr.P.C. A careful examination of the order dated 24.3.2017 reveals that it was founded on the investigating officer's report

regarding innocence of respondent No.2. It is not a case where the respondent No.2 was sent as an accused to face the trial, who was discharged by

the trial Court. Therefore, the argument of learned counsel for respondent No.2 that the order dated 24.3.2017 amounts to discharge is misconceived

and same is not acceptable. Therefore, the application under Section 319 Cr.P.C. was maintainable.

While examining the merits of this case, it is noticed that the FIR in question has two facets: firstly, as per initial version the alleged commission of

offences revolved around the agreement to sell dated 14.7.2008, wherein specific accusation were made against three accused persons, namely,

Vishal Gupta, Bhavana Gupta and Vinod Saini; secondly, during further investigation, the alleged offences were pertaining to the power of attorney in

favour of Vinod Saini and the sale deeds executed in favour of M/s Golden Moment Private Limited. As far as respondent-Satpal Chauhan is

concerned, there are two fold allegations against him; firstly that he is the signatory to the agreement to sell dated 14.7.2008 and secondly, he also

received a sum of Rs.9,00,000/- from Vinod Saini. It is vehemently contended by learned senior counsel that indictment of respondent No.2 was based

upon a criminal conspiracy as he was signatory to the agreement to sell dated 14.7.2008 and therefore he deserves to be tried along with other

accused persons. During arguments, learned senior counsel has candidly admitted that the Memorandum of Understanding dated 17.11.2013 was indeed entered into between the parties and the FIR in respect of some of the accused persons already stands quashed by this Court. A perusal of the

MOU further makes it clear that the earnest money amounting to Rs.4.75 crores was paid to four persons. The relevant portion of the said MOU

reads as under :-

â??Whereas the Party of the SECOND PART [UFIPL] had for the purpose of purchasing the said land paid an amount of Rs.4,75,00,000/- [four

crores seventy five lakhs only] in the year 2008-2009 to Mr. Vinod Saini, Mr. Vishal Gupta, Mrs. Bhavana Gupta and Mr. Ram Niwas Jindal in terms

of the Agreement to Sell.â??

The above leaves no room for any doubt that respondent No.2 was not the person who received any amount pursuant to the agreement to sell in

question. This MOU was duly signed by petitioner-Company and was acted upon by it as well, as the civil suit for specific performance of the

contract brought by the Company stood withdrawn. As far as signatures of respondent No.2 on the said agreement to sell are concerned, this alone

may not be enough to believe the involvement of respondent No.2 in the alleged crime. The instrument dated 14.7.2008 was a pact between two

parties and respondent No.2 was only a witness to it and it is not the case of any of the parties that the said agreement was not executed. Learned

senior counsel did not dispute the fact that a sum of Rs.10 crores was received by the company pursuant to the MOU and explained that it included

the damages as well. In the light of the above, it is clear that the conclusion drawn by the investigating agency regarding innocence of respondent

No.2 was correct as the transaction of receipt and return of Rs.9 lakh by respondent No.2 from Vinod Saini was a separate and independent

transaction. The stand of the complainant in the MOU further lends strength to the innocence of respondent No.2.

Apart from it, nothing has been argued regarding any involvement of respondent No.2 in respect of the offences pertaining to the forged power of

attorney and the execution of the sale deeds. The revisional Court examined the depositions of the witnesses, particularly, PW3 Vikas Mallan and

observed that the witness did not disclose as to in what manner respondent No.2 had participated in commission of crime while hatching up a criminal

conspiracy. Further it was specifically held that neither any document was signed by respondent No.2 with the complainant Company nor any amount

was paid by the Company to respondent No.2. The conclusion of the revisional Court that there was no fresh material available before the trial Court

suggesting involvement of respondent No.2 is based on correct appreciation of material and law on the subject. It is well settled law that the provisions

under Section 319 Cr.P.C. are not to be invoked in a mechanical or routine manner and the power is to be exercised only in suitable cases. The

Constitutional Bench of Hon'ble Supreme Court inH ardeep Singh vs. State of Punjab and others 2014(1) RCR (Criminal) 62 3has clearly laid down

the principles for exercise of power under Section 319 Cr.P.C. It was held that where the evidence suggests more than a prima facie case against a

person who was not sent as an accused before the trial Court, the Court can summon the said person as an additional accused under Section 319

Cr.P.C. At this stage, it will be useful to refer the recent judgment passed by the Hon'ble Supreme Court in â??Labhuji Amratji Thakor and others

Vs. State of Gujarat and anotherâ?? wherein Hardeep Singh's case (supra) was followed and following observations were made :-

â??The High Court does not even record any satisfaction that the evidence on record as revealed by the statement of victim and her mother even

makes out a prima facie case of offence against the appellants. The mere fact that Court has power under Section 319 Cr.P.C to proceed against any

person who is not named in the FIR or in the charge sheet does not mean that whenever in a statement recorded before the Court, name of any

person is taken, the Court has to mechanically issue process under Section 319 Cr.P.C. The Court has to consider substance of the evidence, which

has come before it and as laid down by the Constitution Bench in Hardeep Singh (supra) has to apply the test, i.e.â?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.â??

Considering the facts, circumstances of the case as well as law on the subject, this Court has no hesitation in holding that the trial Court had exceeded

its jurisdiction in allowing the application under Section 319 Cr.P.C vide its order dated 02.8.2017 without recording the required satisfaction, therefore

the revisional Court rightly exercised its revisional powers to set aside the said order. Resultantly, no ground is made out to interfere with the impugned order dated 16.1.2018 (Annexure P-6).

Before parting with the judgment it is clarified that any observations made hereinabove shall not be construed as an expression of opinion on the merits

of the trial, which is pending.

The petition fails and is hereby dismissed.

