

Gurdev Singh Bhalla

v.

State of Punjab & Ors

(Criminal Appeal No. 120 of 2024)

05 January 2024

[Vikram Nath* and Rajesh Bindal, JJ.]

Issue for Consideration

Whether the High Court was justified in dismissing the Revision filed by the appellant against the order of the Special Judge allowing the application u/s. 319 CrPC summoning the appellant along with three other officials of the Police Department.

Headnotes

Code of Criminal Procedure, 1973 – s. 319 – Power to proceed against other persons appearing to be guilty of offence – Case of misappropriation of paddy against father of the informant – Application u/s. 319 for summoning the appellant-Inspector investigating the crime and three other police officials – Allegation against them that they demanded money – Application allowed by the trial court – Said order upheld by the High Court – Interference with:

Held: Statement of the informant providing complete facts with respect to the conduct of the police officials immediately after surrender of his father – Statement consistent throughout the investigation and trial, and with the other witnesses-complainant's wife and his father giving the same details – Witnesses equivocally narrated the incidents that took place at different places regarding threats, demand of huge sum of money, torture of the father – In view thereof, there appears to be *prima facie* evidence on record to make it a triable case as against the appellant – Thus, the order passed by the High Court not interfered with. [Paras 8, 14]

Case Law Cited

Hardeep Singh vs. State of Punjab 2014(1) RCR 623 – followed.

* Author

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Code of Criminal Procedure, 1973; Penal Code, 1860; Prevention of Corruption Act, 1988.

List of Keywords

Summoning of the officials; Misappropriation; Investigation; Trial; Evidence; Witness; Sanction; Torture in custody; Conduct of police officials; Recording of statements; Police remand; Prima facie evidence.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 120 of 2024.

From the Judgment and Order dated 23.03.2023 of the High Court of Punjab & Haryana at Chandigarh in CRR No.1751 of 2018.

Appearances for Parties

Gaurav Agarwal, Aman Singhania, Advs. for the Appellant.

Sunil Fernandes, AAG, Ms. Nupur Kumar, Ms. Priyansha Sharma, Ms. Muskan Nagpal, Ms. Diksha Dadu, Ms. Esshaa Miglani @ Pooja Dhingra, Advs. for the Respondents.

Applicant-in-person

Judgment / Order of the Supreme Court**Judgment**

Vikram Nath, J.

Leave granted.

2. The challenge by means of this appeal is to an order dated 23rd March, 2023 passed by the High Court of Punjab and Haryana at Chandigarh whereby the Criminal Revision filed by the appellant against the order of the Special Judge, Bathinda dated 05.03.2018 allowing the application under Section 319 of the Code of Criminal Procedure, 1973¹ summoning the appellant along with three other officials of the Police Department has been dismissed.

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3. Relevant facts are as follows:

- 3.1 Punjab Agro Foodgrains Corporation Ltd., Bathinda, lodged a complaint on 18.12.2012 at Police Station, Phul, District Bathinda against one Devraj Miglani² which was registered as FIR No.91/2012 under Sections 406, 409, 420, 457, 380 of the Indian Penal Code, 1860³ and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988⁴ with the allegations that Devraj had misappropriated paddy worth Rs.4.18 crores. The investigation of the said FIR was transferred to the Vigilance Bureau, Bathinda on 2nd May, 2013 where the appellant was posted as an Inspector and he was assigned the task of investigating the said crime. The accused Devraj was arrested on 31.08.2013. He was granted police remand on 04.09.2013 for 2-3 days until 06.09.2013 and thereafter he was confined to judicial custody.
- 3.2 Puneet Kumar Miglani⁵, the informant of the present case, happens to be the son of the accused Devraj. According to the informant of the present case on 06.09.2013 Head Constable Kikkar Singh approached Ms. Ritu, niece of the accused Devraj at her work place i.e. Bathinda branch of the SBI demanding a sum of Rs.50,000/- by handing over a slip which was said to have been written by the accused Devraj apparently mentioning that the holder of the slip may be provided the said amount. It is alleged that some conversation also took place between Devraj and his niece Ritu through the mobile phone of Head Constable Kikkar Singh. The informant Puneet Miglani came to know of the said demand by Kikkar Singh. He went to the Bank, took the slip in his possession and after recording some conversation between his wife and his father presented the same along with a complaint before the learned Magistrate.
- 3.3 Direction was issued to the local police to register and inquire into the said complaint. After due enquiry which was carried out by the Deputy Superintendent of Police Janak Singh, it

2 Devraj

3 IPC

4 PC Act

5 Puneet Miglani

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was found that the allegation against the Head Constable Kikkar Singh were *prima facie* made out and accordingly a First Information Report⁶ No.11 of 2013 was registered on 11.09.2013 at police station Vigilance Bureau, Bathinda under Sections 166, 383, 385 IPC and also under the provisions of the PC Act. During the investigation of the said FIR No.11/2013, the statements of informant, wife of informant, Devraj and others were recorded. After completing the investigation, a police report under Section 173(2) Cr.P.C. was submitted on 16th January, 2014 against Head Constable Kikkar Singh only under Sections 166, 383, 385 IPC and Sections 7, 13(2) of the PC Act.

- 3.4 In the trial, the informant Puneet Miglani was first examined as PW1 on 26.05.2014.
- 3.5 29.09.2014 coincidentally happened to be the date in both the trials i.e. trial arising out of FIR No.91/2012 against Devraj and also the trial arising out of FIR No.11/2013 against Head Constable Kikkar Singh. The appellant proceeded to depose, supporting the prosecution case as also the investigation carried out by him against Devraj. On the said date in the trial against Head Constable Kikkar Singh, informant in that case Puneet Miglani gave further evidence as PW 1. On the said date he completed his examination-in-chief as also the cross-examination. Additionally, he kept an application under Section 319 Cr.P.C. ready for summoning the appellant and the three other police officials, and filed the same before the Court.
4. The Trial Court, vide order dated 08.09.2016 rejected the said application on the ground of lack of sanction under the PC Act as also Cr.P.C. The said order was challenged before the High Court successfully and the High Court, by order dated 23.01.2018, remanded the matter back to the Trial Court for passing a fresh order ignoring the issue of sanction. The High Court was of the view that no sanction was required. Pursuant to the remand, the Trial Court, by order dated 05.03.2018 allowed the application under Section 319 Cr.P.C. and summoned the four police officials, viz. (i) Janak

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Singh, Dy.S.P., (ii) Gurdev Singh Bhalla,, Inspector (appellant), (iii) H.C. Harjinder Singh and (iv) H.C. Rajwant Singh. The said order of 05.03.2018 was challenged by the appellant before the High Court primarily on the following grounds by way of criminal revision:

- (i) The order of the Trial Court was not in accordance to the principles laid down by this Court in the case of **Hardeep Singhvs. State of Punjab**⁷ for summoning under Section 319 Cr.P.C.;
 - (ii) It was a pressure tactic on the part of the informant Puneet Miglani to brow-beat the appellant as he had deposed against his father Devraj;
 - (iii) The informant Puneet Miglani was a convict in another case and, therefore, no reliance ought to have been placedon his statement; and lastly,
 - (iv) The order passed by the Trial Court was bad on merits as there was no evidence at all for passing the summoning order.
5. The High Court, as narrated earlier, by the impugned order dated 23rd March, 2023 dismissed the said revision.
6. It appears that before the High Court the main thrust of argument was regarding lack of sanction. Shri Gaurav Agarwal, learned counsel appearing for the appellant made the following submissions:
- (i) The complaint dated 06.09.2013 did not contain any allegations against the appellant;
 - (ii) The complaint made on 06.09.2013 related to demand of Rs.50,000/- only. Subsequently, in the statement given on 29.09.2014, the allegation is that there was a demand of Rs.24 lakhs by the four officials which included one Deputy Superintendent of Police, Janak Singh, the appellant and two other Head Constables viz. Harjinder Singh and Rajwant Singh;
 - (iii) A new case was sought to be set up only in order to brow-beat the appellant as he had deposed against his father Devraj in the other case.;

⁷ 2014(1) RCR 623

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- (iv) The Trial Court and the High Court have mainly confined the discussion with respect to sanction under Section 19 of the PC Act and Section 197 of the Cr.P.C. but have not examined the merits of the matter as to whether the principles and parameters laid down in the case of **Hardeep Singh** (supra) had been followed or whether the said ingredients were present before the Trial Court so as to justify the summoning order under Section 319 Cr.P.C.
7. On the other hand, Shri Sunil Fernandes, learned Addl.Advocate General, appearing for the State of Punjab and Ms.Esha Miglani-wife of the complainant, appearing in person on behalf of the complainant, were heard. According to them, the courts below had correctly appreciated the evidence on record. They also submitted that the appellant and other police officials had harassed and tortured not only Devraj while he was in custody but had also threatened and tortured the family members both mentally and physically in order to extract huge amount of money. Our attention was also drawn to the statements recorded under Section 161 Cr.P.C. during investigation as also before the Trial Court of the relevant witnesses. It was lastly prayed that the appeal be dismissed and the appellant and other police officials must face the trial for the crime committed by them.
8. Having considered the submissions and having perused the material on record, it is quite apparent that the informant Puneet Miglani, in his statement under section 161 Cr.P.C. recorded on 22.09.2013, had narrated complete facts with respect to the conduct of the police officials immediately after the surrender of his father on 30.08.2013 in the case registered against him for mis-appropriation. The consistent case right from that stage till the statement was recorded during the trial on a number of occasions, the informant has supported the statement under section 161 Cr.P.C. Even Devraj and Esha Miglani in their statements recorded during investigation on 15.10.2013 and 22.10.2013 respectively, have given the same details as narrated by the informant Puneet Miglani on 22.09.2013. Further their statements during trial also supports and is in line with their previous statement. All these witnesses have equivocally narrated the incidents that took place at different places regarding threats, demand of huge sum of money, torture of Devraj etc.
9. The complaint dated 06.09.2013, on the basis of which the FIR No.11/2013 was registered, related to the incident which happened

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at the Bank where Ritu, niece of Devraj, was working Head Constable Kikkar Singh had gone there to collect Rs.50,000/- against a slip issued by Devraj. Since everything happened on the same day it is quite possible that the entire story from the time of surrender of Devraj could not have been mentioned but soon after that at the first instance the conduct of the appellant and the other police officials trying to extract money from Devraj and his family members was mentioned in detail by all the witnesses. According to them, the amount was being demanded for the following benefits to be extended: (i) firstly, not to physically torture Devraj; (ii) not to ask for further police remand; (iii) to help him get bail; and (iv) to give him good treatment during his custody. The statement of Ms. Esha Miglani as also Devraj recorded in the trial as PW-18 and PW-13 respectively have also supported the prosecution case regarding the demand of huge amount of money for extending all the benefits, as noted above.

10. The argument mainly advanced by the counsel for the appellant that the FIR mentioned only about Rs.50,000/- whereas subsequent story of Rs.24 lakhs had been set up only in order to brow-beat the appellant being annoyed with the appellant because he gave evidence against his father, may be difficult to accept.
11. Further argument of Mr. Agarwal that the informant moved the application under Section 319 Cr.P.C. on 29.09.2014 was a counter blast and with annoyance and vengeance as appellant had deposed against his father on the same day, has no legs to stand. It is factually incorrect. Informant PW 1 had given the same statement under Section 161 Cr.P.C. and also before the Trial Court on 26.05.2014 which was continued on 29.09.2014.
12. The argument advanced on behalf of the appellant with regard to brow-beating the appellant as he was the Investigating Officer against Devraj can be taken as a defence in the trial.
13. We have perused the statements under Section 161 Cr.P.C. as also the depositions of PW-1, PW-13 and PW-18. The parameters laid down in the Constitution Bench judgment in **Hardeep Singh** (supra) stand fully satisfied. We are refraining ourselves from commenting on the police report under Section 173(2) Cr.P.C. being submitted only charging Kikkar Singh to be sent for trial.

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14. In view of the discussion made above, there appears to be *prima facie* evidence on record to make it a triable case as against the appellant. We, accordingly, are not inclined to interfere with the impugned order. Consequently, the appeal is dismissed.
15. We may also place on record the fact that we are not threadbare discussing the testimony of the witness during the trial as it may ultimately influence the Trial Court at a later stage. We, further, make it clear that any observations made in this order will not come in the way of the Trial Court in deciding the trial on its own merits on the basis of the evidence adduced before it, completely uninfluenced by this judgment.

Headnotes prepared by: Nidhi Jain

Result of the case: Appeal dismissed