

**IN THE HIGH COURT OF MADHYA
PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL REVISION No. 2854 of 2023

BETWEEN:-

**MOHIT S/O SHRI MANGILAL JI
CHOUDHARY, AGED ABOUT 35 YEARS,
OCCUPATION: GOVT. JOB R/O 52
NAYAPRUA ROAD GANGADHAM
MANDSAUR (MADHYA PRADESH)**

.....PETITIONER

(BY MS. PRANJALI YAJURVEDI, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER THROUGH
POLICE STATION SHAHAR KOTWARLI
(MADHYA PRADESH)**

.....RESPONDENT

(BY MS. NISHA JAISWAL, LEANED PANEL LAWYER)

CRIMINAL REVISION No. 3012 of 2023

BETWEEN:-

**MAHENDRA SINGH TOMAR S/O
SHIVSHANKAR SINGH TOMAR, AGED
ABOUT 37 YEARS, OCCUPATION: JOB
112, KARMCHARI COLONY,
MANDSAUR, DISTRICT MANDSAUR**

(MADHYA PRADESH)

.....PETITIONER

(*BY SHRI VIVEK SINGH, ADVOCATE*)

AND

THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER THROUGH
POLICE STATION SHAHAR KOTWALI,
DISTRICT MANDSAUR (MADHYA
PRADESH)

.....RESPONDENT

(*BY MS. NISHA JAISWAL, LEARNED PANEL LAWYER*)

Reserved on : 08.08.2023

Delivered on : 18.08.2023

These revisions coming on for orders this day, with the consent of parties, heard finally and the Court passed the following:

ORDER

This order shall govern the disposal of these Criminal Revisions as they are arisen out of same order dated 29.03.2023 passed in Sessions Trial No. 88/2017 by the learned Second Additional Sessions Judge, Mandasaur, hence, they are heard analogously and are being decided by this common order.

2. These criminal revisions under Section 397/401 of Cr.P.C. have been filed by the petitioners being crestfallen by the order under Section 319 of Cr.P.C. delivered in judgment dated 29.03.2023, passed by the learned 7th Additional Sessions Judge, District Mandasaur in Sessions Trial No.88/2017 whereby the learned trial Court has made the petitioners accused alongwith other co-accused person under Section 319 of Cr.P.C. and issued notice for separate trial against the petitioners.

3. At the time of passing the impugned judgment, the learned trial Court has sentenced the accused persons as under:

S. No.	Name of the accused	Section under convicted	Punishment	Fine	Punishment in default of fine
1	Madhusudan	409 IPC	7 years	10,000/-	1 year
2	Sandeep	409 IPC	7 years	10,000/-	1 year
		467/120B IPC	3 years	1000/-	6 months
		468/120B IPC	3 years	1000/-	6 months
		471/120B IPC	5 years	1000/-	6 months
		201 IPC	1 year	1000/-	6 months
3	Mohammad Farukh	420/120B IPC	3 years	1000/-	1 year
		467 IPC	7 years	1000/-	1 year
		468 IPC	3 years	1000/-	6 months
		471 IPC	5 years	1000/-	6 months
		201 IPC	1 year	1000/-	6 months
4	Mohammad Aslam	420/120B IPC	3 years	1000/-	1 year
		467/120B IPC	7 years	1000/-	1 year
		468/120B IPC	3 years	1000/-	6 months
		471/120B IPC	5 years	1000/-	6 months
5	Nizamuddin	420/120B IPC	3 years	1000/-	1 year
		467/120B IPC	7 years	1000/-	1 year
		468/120B IPC	3 years	1000/-	6 months
		471/120B IPC	5 years	1000/-	6 months

4. The appellants namely Abdul, Aneesh and Madhusudan were acquitted from all the charges except Madhusudan was convicted under Section 409 of IPC as mentioned above.

5. In this regard, the learned trial Court, passing the impugned judgment, mentioned in para Nos. 98 to 100 that the petitioners alongwith other person namely Lalit Agrawal has played important role in the said offence. It is also disclosed that the petitioners and Lalit Agrawal was made accused at early stage, however, the prosecution has filed the final report under Section 173(8) of Cr.P.C. to the effect that they have no role in the crime. In this regard, the learned trial Court has observed that the amount was deposited in the account of petitioners through missing cheques, hence, they are required to be prosecuted. It is also commented that the police administration has tried to save the petitioners alongwith Lalit Agrawal from being impleaded in the criminal case as accused. As such, after observing as aforesaid, in view of the judgement of Hon'ble Apex Court rendered in the case of *Sukhpal Singh Khaira vs. State of Punjab [(2023) 1 SCC 289]*, the learned trial Court has adjudicated that separate trial should be initiated against the petitioners, Mohit and Mahendra and therefore, a notice for separate trial should be issued against them.

6. Counsel for the petitioners in these revision petitions as well as in arguments submits that on the basis of written complaint of Branch Manager of the Society, an enquiry report was prepared, wherein it is mentioned that the society has received cheque of Rs.5.85 Lakhs in the account of Bhulibai, the said cheque was signed cheque, but in the enquiry report, it was found that Bhulibai

is an illiterate person. During enquiry, it was found that the cheque was received in the account of Bhulibai. It is further unearthed that cheque Nos.494676 to 49700 were missing and Sandeep, Mohammad Farooq and Madhusudan were responsible for the alleged offence. It is further submitted that on the basis of the statement of co-accused Mohammad Farooq recorded under Section 27 of the Evidence Act, cognizance under Section 319 of Cr.P.C. has been taken against the petitioners whereas such type of evidence is not admissible. It is further submitted that the petitioners have been foisted as accused only on the ground of suspicion, therefore, the order of learned trial Court regarding taking cognizance against the petitioners under Section 319 of Cr.P.C be set aside.

7. In course of arguments, it is further contended by learned counsel for the petitioners that the learned trial Court has made the petitioners as accused, in view of the guidelines enumerated by the Hon'ble Apex Court in the case of *Sukhpal Singh (supra)*, however, the learned trial Court has not passed the impugned order in accordance with the law laid down by Hon'ble Apex Court. It is further submitted that the order of summoning the petitioners as accused should be passed before pronouncement of the order of acquittal in such type of cases where the order of acquittal and conviction both are recorded.

8. Learned counsel for the State has remonstrated the contentions of the petitioners and submitted that the findings of the learned trial Court regarding issuance of notice to the petitioners is based on correct assumptions. Therefore, the said findings do not

warrant any interference. Learned counsel for the State has also submitted that if the petitioners have not played any active role in the said crime, they will surely be acquitted after completion of trial, but anyway, they should not be eschewed to face the regular trial. Hence, revision petition may be dismissed.

9. In view of the aforesaid submissions and arguments advanced by counsels for the parties, the following points are required to be considered:-

(i) Whether the learned trial Court has correctly used the power of summoning the additional accused on the date of judgement or not?

(ii) Whether in view of the facts of the case the learned trial court has arrayed the petitioners as accused by summoning them correctly or not?

10. At the outset, the technical arguments of learned counsel for the petitioners are required to be ruminated. In the course of any enquiry or trial of an offence, if it appears to the Court from the evidence that any person, not being the accused of the case, has committed any offence for which, such person can be tried together with the accused persons, the Court may proceed against such person in the offence which he appears to have committed and if such person is not attending the Court, he may be summoned or arrested. In this way, Section 319 of Cr.P.C. emphasizes the principle of trying together with the other accused persons.

11. So far as the separate trial is concerned, nevertheless, when a person is emerged as an accused at belated stage of trial, a separate trial can be initiated. The learned trial Court while relying upon the

judgment passed by a Constitutional Bench of Hon'ble the Apex Court in the case of *Sukhpal Singh (supra)*, passed this order under Section 319 of Cr.P.C. In this regard, following extracts of the aforesaid judgment be reads as under:

"The power under Section 319 is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable."

12. Now, the question is whether the learned trial Court has applied the aforesaid law in passing the impugned order under Section 319 of Cr.P.C. In this case, two of the accused have been acquitted and five have been convicted. As such, this is a case of joint result; i.e. acquittal and conviction, both. Hence, in my considered opinion, the learned trial Court should pass the order under Section 319 of Cr.P.C. before passing the order of acquittal of Aneesh and Abdul Saleem. Since, the learned trial Court has passed the impugned order under Section 319 of Cr.P.C. against the petitioners after acquitting the accused persons rather than preceding their acquittal, the order passed by the learned trial Court cannot be said to be in accordance with the settled law laid down by

Hon'ble Apex Court in the case of *Sukhpal Singh (supra)*. Therefore, on the basis of this sole reason, this order of learned trial Court is not sustainable in the eyes of law.

13. Now, turning to merits of the case, I have gone through the record and at the outset, it is found that on the same crime number, the learned Sessions Judge by its impugned judgment, has ordered to summon these petitioners as accused. Further, It is evident from Para 98 of the impugned judgment that, the petitioners namely Mohit and Mahendra have been implicated in the case on account of suspicion as the amount has been transferred to their respective bank accounts only through the cheques that were found missing from the bank and the same has been disbursed from their accounts. From Para 99 of the impugned judgment, the learned trial Court has also observed the same fact which was observed qua the co-accused Lalit. A Criminal Revision No. 2034/2023 was filed before this Court on behalf of Lalit and this Court after considering the same elaborately, has set aside the impugned order therein vide order dated 28.06.2023.

14. Regarding Mohit and Mahendra, the learned trial Court has expressed in Para 56 of the judgment that the accused Sandeep has stated in his memorandum statement (Ex.-P/33) that he has deposited money in the accounts of Mohit and Mahendra and further, got it returned from their accounts and deposited it to District Co-operative Bank. On this aspect, it is also stated in memorandum statement (Ex.-P/33) that accused Sandeep himself had operated all these transactions by taking these persons i.e. Mohit and Mahendra into confidence with the help of another co-

accused Farukh.

15. Now, the question arises as to what was the role of Mohit and Mahendra in these transactions. The prosecution is unable to answer the question as to how these persons committed breach of trust, cheating or forgery. The learned trial Court has also not pointed out anything, by which it can be ascertained that Mohit and Mahendra have committed the offence punishable under Sections 420, 409 and 467 of IPC. There is no evidence available on record that the petitioners-Mohit and Mahendra themselves were involved in depositing of money in their accounts, further withdrawal and deposited in the bank.

16. Now, the question arises whether any person can be impleaded as accused only on the basis of aforesaid facts as to depositing of amount in their accounts and thereafter returning it to the accounts of bank. In this regard, the view of Hon'ble Apex Court in the *Brindaban das & others vs. State of West Bengal: [(2009) 3 SCC 329]*; reads as under:

"18. The common thread in most matters where the use of discretion is in issue is that in the exercise of such discretion each case has to be considered on its own set of facts and circumstances. In matters relating to invocation of powers under Section 319, the Court is not merely required to take note of the fact that the name of a person who has not been named as an accused in the FIR has surfaced during the trial, but the court is also required to consider whether such evidence would be

sufficient to convict the person being summoned. Since issuance of summons under Section 319 of Cr.P.C entails a de novo trial and a large number of witnesses may have been examined and their re-examination could prejudice the prosecution and delay in the trial, the trial Court has to exercise such discretion with great care and perspicacity."

17. Further, Hon'ble the Apex Court in the case of *Hardeep Singh vs. State of Punjab* reported in [(2014) 3 SCC 92], in para no.12 has held as under:

"Section 319 of Cr.P.C springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr.P.C".

18. Endorsing the aforesaid verdict, Hon'ble the Apex Court in the case of *Vikas Rathi vs. State of U.P. & Anr.* [(2023) LiveLaw (SC) 172], has held in Para 9 and 10 of the judgment, which is reproduced as under:

"9. The principles of law with reference to exercise of jurisdiction under 319 Cr.P.C. are well settled.

10. The Constitution Bench in Hardeep Singh and Ors.'s case (supra), opined as under:

"105. Power u/s 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 laid 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 laid before the court, not necessarily tested on the anvil of cross-examination, it requires much strong evidence that near 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 un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power u/S 319 CrPC. "

19. In a recent judgment in the case of *Juhru and others vs. Karim and Another [AIR 2023 SC 1160]*, Hon'ble the Apex Court has further reiterated that the power of summoning under Section 319 of Cr.P.C. should not be exercised routinely, and the existence of more than a prima facie case is sine qua non for summoning an additional accused.

20. In view of the aforesaid facts and settled propositions of law, this Court is of the considered opinion that a person can only be

summoned as an accused, when the trial Court, after analyzing the evidence available on record strongly feels that there is sufficient and overwhelming evidence available on record and it is expedient for justice to summon him as accused. Only in such situation, the trial Court, using its extraordinary jurisdiction, may summon a person as an accused in the interest of justice.

21. In the case at hand, the learned trial Court, without assigning sufficient ground for substratum of constituting the said offences, punishable under Sections 420, 409 and 467 of IPC, has wrongly observed that the role of the petitioners are suspicious and required to be summoned as accused persons. Virtually, such type of vague and obscure finding is not sufficient to implead persons as an accused and to direct them for facing a separate trial.

22. In upshot of the aforesaid analysis and settled proposition of law, the findings of the learned trial Court to summon the petitioners under Section 319 of the Cr.P.C., cannot be sustained in the eyes of law. Therefore, both of petitions are allowed and the finding recorded in para nos. 98 to 100 of the impugned judgment being incorrect and improper *qua* the petitioners, are liable to be and is hereby set aside.

23. The criminal revisions are allowed and disposed off.

Certified copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE