

**HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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**CRM-M-46260-2024 (O&M)**

**Date of Decision: 28.02.2025**

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Sanjeev Kumar

... Petitioner

VS.

State of Punjab & Ors.

... Respondents

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**CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL**

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Present: Mr. Deepak Sabherwal, Advocate for the petitioner

Mr. JS Rattu, DAG Punjab

Mr. Kushagra Mahajan, Advocate for respondents No.2&3

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**Sandeep Moudgil, J. (Oral)**

(1). This is a petition under Section 528 Cr.P.C. seeking quashing/setting aside of impugned order dated 05.05.2017 (Annexure P-5) whereby the trial Court has inter alia erroneously allowed the application under Section 319 Cr.P.C. and summoned the present petitioner to face trial in case FIR No.81 dated 04.03.2015 (Annexure P-1) under Sections 420, 467, 468, 471 and 120-B of IPC registered at Police Station Civil Lines, Amritsar City.

(2). Learned counsel for the petitioner would vehemently contend to assail the order dated 05.05.2017 (Annexure P-5) whereby the petitioner Sanjeev Kumar has been summoned in an application under Section 319 Cr.P.C. in case FIR No. 81 dated 04.03.2015 (Annexure P-1) under Sections 420, 467, 468, 471 and 120-B of IPC. Learned counsel has argued that in any case even if the assertion that the petitioner was working as helper of Sukhjinder Singh Rimpi, Patwari is taken to be true thereafter also the petitioner has not been attributed any role whatsoever directly or indirectly

which would attract the provisions of Section 419, 420, 467, 468, 471, 120-B, 34 IPC who is neither signatory to any of the documents nor in any capacity has performed any kind of role in the preparation of alleged documents at the behest of Patwari.

(3). It is vehemently contended that the summons or the warrants issued by the trial court in application under Section 319 CrPC were never received by the petitioner inasmuch as the same were issued at a wrong address and even thereafter the bailable and non-bailable warrants also remained unexecuted as the same were issued by mentioning the name of the petitioner as “Sanjiv Kumar Helpers of Sukhjinder Singh Rimpi, Patwari” without incorporating any details of address. The petitioner has placed on record copies of notices/summons, bailable/non-bailable warrants as Annexure P6 with the additional affidavit dated 28.02.2025 filed today in Court, which is taken on record. Reliance has been placed on (i) **Hardeep Singh vs. State of Punjab & Ors. (2014) 3 SCC 92**; (ii) **Dhariwal Tobacco Products Ltd. & Ors vs State Of Maharashtra & Anr. (2009) 2 SCC 370**; (iii) **Prabhu Chawla vs. State of Rajasthan & Anr. (2016) 16 SCC 30**.

(4). Learned State counsel on instructions submits that as per the case of the prosecution, the petitioner Sanjeev Kumar was working as a helper of Sukhjinder Singh Rimpi, Patwari and the documents in question have been signed by the said Patwari alone, however, no incriminating material could be put forth before this Court to connect the petitioner with the commissioning of any such offence as has been narrated in the FIR.

(5). Short reply dated 13.01.2025 has also been filed by respondents No.2&3 which is taken on record, wherein it has been averred that the present

petition is barred by limitation inasmuch as the summoning order impugned herein was passed way back on 05.05.2017 whereas the petitioner approached this court after 7 years and there is no explanation in support thereof much less valid or just. That apart, it is contended that there are specific allegation qua the role of the petitioner, who connived with the Patwari and other officers and the trial court after appreciating the evidence on record has rightly passed the impugned order summoning the petitioner to face trial.

(6). Mr. Kushagra Mahajan, Advocate further submits that challan in the FIR was presented on 10.09.2016 against Harpreet Singh only and after the summoning of the co-accused persons under Section 319 CrPC by the trial court, some of the accused persons filed revision petition before the Sessions Court which were dismissed on 20.07.2022 against which, the accused persons approached this Court in CRM-M-1713-2023 which too has been dismissed vide order dated 14.02.2025.

(7). He urged that the present petition in the present form cannot be maintained as the petitioner has laid challenge to an order dated 05.05.2017 passed by JMIC, Amritsar which is an interim order against which a criminal revision was maintainable before the Sessions Court, Amritsar or before this Court and therefore, on this ground alone, the present petition deserves to be dismissed being not maintainable.

(8). Heard learned counsel for the parties.

(9). The present FIR was filed in the March, 2015 at the instance of respondent No.2-Balbir Singh alleging a sale deed of plot measuring 52 sq.yards was executed by Satpal s/oVirpal in favor of his wife Kuldeep Kaur (respondent No.3) after getting the documents checked from the revenue

department and mutation was also sanctioned in favour of respondent No.3 by Sukhwinder Singh Patwari on 14.03.2013 after two months, the respondent No.2 came to know that the aforesaid house was mortgaged with Punjab and Sindh Bank, Branch Chowk Phuwara, Amritsar and the Patwari Sukhwinder Singh cancelled his mutation without giving him prior notice and also found that the Manager Karamjit Singh Gandhi of the Punjab and Sindh Bank, Branch Chowk Phuwara, Amritsar had not taken the original sale deed in his possession from Harpreet Singh and entry relating to the mortgaged property was not made in Revenue Records.

(10). The assertion made on behalf of respondents No.2&3 is that the inherent power of the court can be exercised when there is no remedy provided in the Code of Criminal Procedure and in case where the trial judge refused or acceded to summon a person as additional accused under Section 319 CrPC, the aggrieved party has remedy to file revision under Section 397/401 CrPC and petition under Section 482 CrPC is not maintainable.

(11). Learned counsel for the petitioner refuted the above assertion relying upon **Prabhu Chawla** (supra), wherein a three-Judge Bench of the Apex Court unequivocally held that there can be no total ban on the exercise of such wholesome jurisdiction inasmuch as Section 397 CrPC is attracted against all the orders other than interlocutory, and a contrary view would limit the availability of inherent powers under Section 482 CrPC only to petty the interlocutory orders which is wholly unwarranted and undesirable. The Apex Court further disagreed with the views taken by its Division Bench in **Mohit @ Sonu & Anr.** case (supra) and held that it “*does not state*

*the law correctly*” in respect of inherent power of the High Court in Section 482 CrPC. The relevant portion of the said judgment reads as under:-

*“6. In our considered view any attempt to explain the law further as regards the issue relating to inherent power of High Court under Section 482 Cr.P.C. is unwarranted. We would simply reiterate that Section 482 begins with a non-obstante clause to state: “Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.” A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J. “abuse of the process of the Court or other extraordinary situation excites the court’s jurisdiction. The limitation is self-restraint, nothing more.” We venture to add a further reason in support. Since Section 397 Cr.P.C. is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 Cr.P.C. only to petty interlocutory orders! A situation wholly unwarranted and undesirable.*

*7. As a sequel, we are constrained to hold that the Division Bench, particularly in paragraph 28, in the case of **Mohit alias Sonu and another** (supra) in respect of inherent power of the High Court in Section 482 of the Cr.P.C. does not state the law correctly. We record our respectful disagreement.”*

(12). A perusal of the above would lead to a conclusion that Section 397 CrPC is attracted against all the orders other than interlocutory and a contrary view would only limit the availability of inherent powers under Section 482 CrPC inasmuch as the issuance of summons is not an interlocutory order within the meaning of Section 397 CrPC and only because

a revision petition is maintainable before the Sessions Court or this Court, by itself, would not constitute a bar for entertaining an application under Section 482 CrPC, for the power of the High Court can be exercised not only in terms of Section 482 but also in terms of Section 483 CrPC which casts a duty upon this Court to exercise continuous superintendence over Courts of Judicial Magistrates so as to ensure expeditious and proper disposal of the cases by such Magistrates. Furthermore, the High Court's inherent jurisdiction, being *sui generis* in nature, is not circumscribed by statutory limitations, and its exercise cannot be barred solely due to the availability of alternative remedial avenues, such as revisional jurisdiction. This view of mine is supported by the decision of Apex Court in *Krishnan & Anr vs Krishnaveni & Anr. (1997) 4 SCC 241.*

(13). As can be seen from the impugned order, the petitioner-Sanjeev Kumar is neither named in the FIR nor in challan submitted by the prosecution before the trial court and it is only Harpreet Singh, against whom the challan has been filed alleging him to be the impersonator who signed as Satpal Singh and executed the Sale deed in favour of the wife of the complainant. Meaning thereby there was no evidence at all to implicate the present petitioner in the matter. Secondly, the petitioner is neither a party to the alleged sale deed, nor is he the attesting witness. The prosecution has failed to prove if the petitioner had any interest in the sale deed or that he was instrumental in getting the sale deed executed or getting the mutations signed by the patwari. That apart, in the examination in chief of the respondents No.2-complainant, the petitioner was merely named and no specific role was

attributed to him except that he and one Rajnish were the helpers of Patwari Sukhjinder Singh.

(14). It is well settled proposition of law that it requires much stronger evidence than merely probability of complicity and the test that has to be applied is one which is more than *prima facie* case as exercised at the time of framing of charges but short of satisfaction to the extent of that evidence if goes un rebutted would lead to conviction. In the present case, the prosecution has failed to connect the petitioner with any specific role and there is no incriminating material either before the trial court or even this Court in fortification of the vague assertion against the petitioner. This Court need not be satisfied that the petitioner had committed an offence albeit it is only to be seen whether a *prima facie* case is made out to proceed against the petitioner inasmuch as under Section 319 CrPC, though the test of *prima facie* case is the same, the degree of satisfaction that is required is much stricter. The prosecution has failed to adduce any evidence much less stronger than mere probability of complicity of the petitioner and as such, this Court refrains from exercising power under Section 319 CrPC.

(15). In view of the above discussion, this petition is allowed and the order dated 05.05.2017 (Annexure P5) is hereby set aside.

28.02.2025

V.Vishal

1. Whether speaking/reasoned?

2. Whether reportable?

**(Sandeep Moudgil)**  
**Judge**

Yes/No

Yes/No