

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

CRM-M-5735-2015

Date of decision: 9.4.2015

Sumer and others

...Petitioners

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR**

Present: Mr.Bijender Dhankhar, Advocate for the petitioners

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**SNEH PRASHAR, J.**

1. The present petition under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been filed for setting aside order dated 26.9.2014 (Annexure P-1), passed by the learned Judicial Magistrate, 1<sup>st</sup> Class, Faridabad, whereby the petitioners have been summoned under Section 319 Cr. P.C. to face trial as additional accused in case FIR No.99 dated 25.7.2011, under Sections 323, 325, 506, 34 of the Indian Penal Code registered at Police Station Bhupani, District Fariabad. The judgment dated 10.12.2014, passed by the learned Additional Sessions Judge, Faridabad dismissing the revision petition, filed against the said summoning order dated 26.9.2014 had also been assailed.

2. The First Information No.99 dated 25.7.2011 was registered on the statement of Hariom s/o Rajender. Precisely his allegations were

that on 22.7.2011, at about 5 AM, Bijji, Lala Ram, Sumer Singh, Rohtash, Mangal, Shyam and Hoshiyar Singh etc. armed with iron rods and dandas and their faces muffled had entered his house and inflicted injuries on him and his uncle Ashok with their respective weapons. They had also put his room on fire.

During investigation, out of seventeen persons, fourteen including the petitioners were found to be innocent and the other three namely Bijji, Rajender @ Pappi and Shyam Singh were challaned. The names of the petitioners etc. were mentioned in column no.2 in the final report filed by the prosecution.

3. During trial after the statement of the complainant Hariom was recorded, an application under Section 319 Cr.P.C. was filed by the prosecution for summoning Lala Ram, Sumer Singh, Rohtash, Mangal, Hoshiar, Bala, Ballo, Anju Dharam Singh, Lali, Gajri, Rai Singh @ Bona @ Geeta etc. as additional accused.

The application was partly allowed by learned Judicial Magistrate, 1<sup>st</sup> Class, Faridabad vide order dated 26.9.2014 and petitioners Sumer and others were summoned but the application as against Lala Ram, Rohtash, Bala and Anju was dismissed.

Petitioners preferred a revision petition, which was dismissed by learned Additional Sessions Judge, Faridabad vide judgment dated 10.12.2014.

Feeling aggrieved, the petitioners preferred the instant petition by invoking the provisions of Section 482 Cr.P.C. and prayed for

setting aside the impugned order dated 26.9.2014, passed by learned Judicial Magistrate, 1<sup>st</sup> Class, Fariadabad and the judgment dated 10.12.2014, passed by learned Additional Sessions Judge, Faridabad.

4. Submissions made by Mr.Bijender Dhankhar, Counsel representing the petitioners have been heard.

5. Learned counsel for the petitioners argued that the instant case was an outcome of a dispute between the parties relating to a piece of land. The parties are connected through common ancestor. Only with a view to harass and humiliate the petitioners, a false case was got registered by the complainant concocting a story which had no truth in it. In the complaint seventeen persons were named as accused, but during investigations fourteen, including the petitioners, were found to be innocent as their complicity in the alleged occurrence was nothing but manipulation of the complainant. Since, no specific role or any overt act was assigned to the petitioners, there was no ground to summon them as additional accused.

6. The provisions of Section 319 Cr.P.C. empower the Court to summon any person to face trial as an additional accused if there is sufficient material / evidence available to show that the said person had committed an offence for which he could be tried together with other accused.

It has been held by Hon'ble Apex Court in case **Suman Vs. State of Rajasthan and another, (2010) 1 Supreme Court Cases 250** as under:-

"A reading of the plain language of Section 319(1) CrPC makes it clear that a person not already an accused in a case can be proceeded against if in the course of any inquiry into or trial of an offence it appears from the evidence that such person has also committed any offence and deserves to be tried with other accused. There is nothing in the language of Section 319(1) CrPC from which it can be inferred that a person who is named in the FIR or complaint but against whom charge sheet is not filed by the police, cannot be proceeded against even though in the course of any inquiry into or trial of any offence the court finds that such person has committed any offence for which he could be tried together with the other accused.

The process issued against the appellant under Section 319 CrPC cannot be quashed only on the ground that even though she was named in the complaint, the police did not file charge-sheet against her. A person who is named in the FIR or complaint with the allegation that he/she has committed any particular crime or offence, but against whom the police does not launch prosecution or files charge-sheet or drops the case, can be proceeded against under Section 319 CrPC if from the evidence collected/produced in the course of any inquiry into or trial of an offence, the court is prima facie satisfied that such person has committed any offence for which he can be tried with other accused."

7. In the case in hand, the petitioners were specifically named in the First Information Report as the assailants. When the complainant appeared as PW2 before the trial Court, he reiterated on oath that on the fateful day, the petitioners alongwith other co-accused, who are facing trial had caused injuries to him and his uncle with iron rod and dandas.

They were also stated to have put the room of the complainant on fire.

8. The learned Additional Sessions Judge, Faridabad while dismissing the revision petition vide judgment dated 10.12.2014, in para 12 has observed as under:-

“In the present case the complainant gave the names of the culprits at first instance, again re-iterate his version before the Investigating Officer at the time of recording of his statement. The same stand is taken by the complainant while deposing before the learned trial court. However, it is also a point to be noted that while deposing before the learned trial court he explained the things to the best of his memory. There is no explanation offered by the Investigating Officer that on what grounds the named accused persons were exonerated. Rights of each and every individual is protected by the State with equal safeguards. If the accused be not put on trial without any legal implication then the statement on oath of the complainant should also be not gone into waste. Now there are two views, why complainant be trusted and police report be declined. It is settled law that if someone come forward and put himself on stake for trial and depose on oath before a competent court then this testimony be relied upon.”

9. Learned counsel for the petitioners failed to demonstrate any perversity or error of law committed by learned courts below arising

out of misreading /misappreciation of evidence/ material available on the record. For summoning a person as an additional accused the requirement is more than prima facie case but less than leading to prospects of conviction. Once complicity of the petitioners is disclosed in the FIR and is also affirmed by the testimony of PW2 Hariom, it cannot be said that the testimony on oath of the said witness, if left unrebutted would not reasonably lead to conviction.

10. Thus, finding no illegality or perversity in the impugned orders, no intervention is called for and the instant petition being devoid of any merit is dismissed.

9.4.2015  
gsv

**(SNEH PRASHAR)**  
**JUDGE**

**Note:** Whether to be referred to the Reporter?

Yes/No