

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

**CRR No.2915 of 2012 (O&M)
Date of Decision: February 24, 2015**

Barkat Ali

.... Petitioner

vs.

State of Haryana and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. R.K. Sharma, Advocate for the petitioner.

Mr. Satish Saini, Deputy Advocate General, Haryana.

Mr. R.S. Sihota, Senior Advocate with

Mr. B.R. Rana, advocate

for respondent Nos.2 to7, 9 and 10.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Kuldip Singh J.(Oral)

Complainant-Barkat Ali (revisionist herein) has filed this revision petition against the order dated 13.08.2012 passed by learned Addl. District and Sessions Judge, Palwal, whereby the application filed by the complainant-revisionist through the Public Prosecutor under Section 319 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.') for summoning private respondent Nos.2 to 11 as co-accused, was dismissed.

I have heard learned counsel for the parties and have also carefully gone through the case file.

At the very outset, it has been disclosed that eight persons were tried by the learned Addl. Sessions Judge, Palwal. The

trial has since been concluded and they have been convicted under Sections 148, 149, 323, 325, 326, 307 and 316 of the Indian Penal Code, 1860 and were acquitted of the charges under Section 25 of the Arms Act, 1959.

It comes out that Shahabuddin, injured had appeared as PW1 and attributed specific role to respondent Nos.2 to 11, on the basis of which, the said application was filed.

Learned Addl. Sessions Judge, Palwal, came to the conclusion the injuries attributed to the accused sought to be summoned, are not corroborated by the medical record. In this regard, the observations of learned Addl. Sessions Judge, Palwal, are reproduced as under:

“As far injuries sustained by PW1 Shahabuddin is concerned; role attributed to accused Sunder is that he had caused an axe blow on the head of Shahabuddin and accused Raju had caused danda blow on left hand. However, his injury report Ex.PD found mentioned that this injured has received injuries on phalanx, abrasion on posterior region and injury on right ear. Thus, it is clear that the injuries sustained by Shahabuddin do not correspond to the injuries alleged to have been caused by Sunder and Raju (not facing trial).

As far as case of PW2 Tayyub injured is concerned; by sword. However, no sharp edge injury Tayyub. Accused Virender (not facing trial) is attributed with injury on the head of Tayyub caused by farsa. However, no injury caused by sharp edge weapon was found on the head of Tayyub. Even no injury was found as per his M.L.R. Ex.PE.

As far as case of accused Raju and Birpal is concerned; they are attributed with injury caused on right forearm of injured Tayyub. However, only on injury was found on right forearm of PW2 Tayyub and second injury was found on shoulder of PW2 Tayyub. Therefore, the injuries as alleged to have been caused by aforesaid Sonu, Virender, Raju and Birpal do not correspond to the injuries reflected in injury report of PW2 Tayyub which is Ex.PE.

Likewise, PW3 Pappu is alleged to have received injuries at he hands of Niranjan by Lathi on his buttock and at the hands of Indraaj by slap and fist. However, as per his injury report Ex.PB only one injury was found on lower half of right leg. Therefore, the injuries reflected in Ex.PB M.L.R. of Pappu do not correspond to the allegations levelled by PW3 Pappu when he had appeared in the witness box.

Now coming to the injuries suffered by Babu (PW4) no specific injuries have been attributed to be caused by Manoj, Rattan Lal and Mahabir accused (not facing trial)

As far as case of injured Anwar (PW6) is concerned; it has been deposed by PW6 Anwar that he had received injuries at the hands of Sunder on left elbow caused by lathi and Virender caught hold him. His injury report Ex.PG discloses that he was having complaint of pain. Thus, injuries alleged to have been caused by Virender and Surender do not correspond to the injuries as reflected in M.L.R. of Anwar which is Ex.PG.”

Therefore, the said application for summoning of the aforesaid ten persons as additional accused was dismissed.

Learned counsel for the revisionist has argued that there were injuries on the person of Shahabuddin and that the view taken

by learned Addl. District and Sessions Judge, Palwal was not correct.

I am of the view that once the view has been taken that the injuries attributed are not corroborated by the medical record, it was not justified to summon the additional accused to face trial. As many as eight persons have already faced trial and ten more persons are sought to be summoned. Another fact, which goes against the revisionist is that in this case the trial has already been concluded. Under Section 319 Cr.P.C., the additional accused could not be summoned to be tried with the accused, who have already been convicted. Since, the trial has already concluded, they cannot be summoned as additional accused to face the trial, therefore, the present revision petition is devoid of merits and is accordingly dismissed.

February 24, 2015

sarita

**(KULDIP SINGH)
JUDGE**