

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

CRR No. 1769 of 2015

Date of decision:- May 15, 2015

Bharat

.....Petitioners..

Vs.

State of Haryana and others

....Respondents..

CORAM:- HON'BLE MR. JUSTICE JASPAL SINGH

Present:- Mr. Pawan Attri, Advocate,
for the petitioner.

1. Whether Reporters of local papers 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?

JASPAL SINGH, J.

The present revision petition has been directed against the order dated February 13, 2015 passed by Id. Additional Sessions Judge, Sonapat vide which application under Section 319 Cr.P.C. filed by petitioner/complainant for summoning Om Parkash son of Laxman, Gian Chand son of Krishan Chand, Vijay son of Roshan, Om Parkash son of Vasudev and Banti wife of Laxman as additional accused to face trial, was dismissed.

2. Shortly, put case of prosecution is that on October 01, 2014, a telephonic message from General Hospital, Sonapat was received in the Police Station Rai, District Sonapat with regard to the admission of Tek Chand, resident of Tanda after sustaining injuries in a quarrel. On receipt of information, SI, Phool Kunwar accompanied

by other police officials visited General Hospital, Sonapat and collected the MLRs in respect of injureds and also recorded statement of Bharat son of Tek Chand, wherein he alleged that on October 01, 2014 at about 6.00/6.30 a.m., his father Tek Chand was going to answer the call of nature, Laxman and Roshan sons of Fakir Chand, Om Parkash and Vinod sons of Laxman, Gian Chand son of Kishan Chand, Vijay son of Roshan, Om Parkash son of Vasudev and Banti wife of Laxman came in front of their house while armed with GANDASA, BALLAM, and LATHIS. He (complainant) accompanied by his cousin Om Parkash son of Mool Chand and Gian Chand son of Mangu Ram rushed to the spot and when they tried to save his father, assailants started beating him as well as his father. It has further been unfolded that Vinod son of Laxman dealt a BALLAM blow on the left side of chest of his father Tek Chand due to which his father fell down. Thereafter, Laxman inflicted GANDASI blow on the legs of Om Parkash, Roshan gave a BALLAM blow on his waist and Banti wife of Laxman also caused injuries on his (complainant) legs whereas Gian Chand pelted a BRICK bat blow hitting on his head and face. Not only, this Om Parkash son of Vasudev dealt a DANDA blow on the body of his cousin Om Parkash son of Mool Chand. On sustaining injuries, they all fell on the ground and also tried to assist his father Tek Chand. On hearing commotion several persons attracted to the spot and on seeing them, all the assailants fled away from the spot with their respective weapons while extending threats to their lives.

3. After the registration of case, investigation was carried out, during which respondents No. 2 to 6 were found innocent. While presenting the chalan under Section 173 (2) Cr.P.C. their names were placed in column No.2. However, after the examination of complainant-Bharat son of Tek Chand, an application under Section 319 Cr.P.C, was moved for summoning respondents No. 2 to 6 as additional accused to face trial along with Vinod Kumar and others but that application was dismissed vide impugned order dated February 13, 2015.

4. While assailing impugned order dated February 13, 2015, it has been ebulliently argued by learned counsel for petitioner that despite the availability of cogent, convincing and sufficient evidence appearing in the statement of PW-1 Bharat, Id. trial court has dismissed the application without assigning any cogent reason. In fact, a specific role has been attributed to respondents No. 2 to 6 while getting his (complainant) statement recorded with the police, on the basis of which FIR was registered. Subsequently, when he appeared in the witness-box as PW-1 after framing of charge against Vinod etc., it has been categorically stated by Bharat that respondents No. 2 to 6 criminally participated in the occurrence and caused injuries, not only to him but also to his father namely Tek Chand. Mis-appreciation of legal proposition as well as evidence available on file in the shape of statement of Bharat PW-1 has resulted into miscarriage of justice.

5. While relying upon the pronouncement of Hon'ble Apex

Court captioned as ***“Ram Pal Singh and others vs. State of U.P. and another”***, 2009 (2) RCR (Criminal) 131 as well as of this Court titled as ***“Mann Singh and others vs. State of Punjab and another”***, 2009 (2) RCR (Criminal) 289, it has been submitted by learned counsel for petitioner that when some persons have been named in the FIR as accused but during investigation of this case, police came to the conclusion that they are innocent and challan was not presented against them, they can be summoned as additional accused on the basis of allegation made in the FIR, even, though those allegations have been found to be false by the police. In the case in hand, a specific role has been attributed to respondents No. 2 to 6 that they have participated in the occurrence and caused injuries to complainant as well as his father.

6. As far as the legal proposition highlighted in the above referred authorities is concerned, there is no dispute about the same. A perusal of Section 319 Cr.P.C. itself makes it abundantly clear that in case Investigating Agency for any reason does not array one of the real culprits as accused, court is not powerless in calling said accused to face trial but before a person can be summoned as an accused under Section 319 Cr.P.C., it is obligatory upon the court to satisfy that it appears from the evidence that such person not being the accused has committed any offence, for which, he can be tried together with the accused. Thus, question which arises for determination is as to whether satisfaction as required under Section 319 Cr.P.C. can be recorded in the facts and circumstances of the

case in hand or whether there are reasonable prospects of ending the trial of the persons sought to be summoned as additional accused for the alleged offences in conviction.

7. Adverting to the facts and circumstances of the case in hand, Bharat PW-1 while appearing in the witness-box after framing of charge against Vinod and others has deposed that when his father Tek Chand had gone to answer the nature of call and reached in front of the house of accused-Laxman, Laxman, Roshan, Vinod, Om Parkash, Gian Chand, Banti, Vijay and Om Parkash caught hold his father and started beating him. After hearing commotion of altercation as well as noise of his father, he (complainant), Om Parkash and Gian Chand, his cousin reached at the spot from his house and tried to pacify. It has further been alleged that Gian Chand pelted a BRICK bat blow hitting on his head and face whereas Om Parkash son of Vasudev dealt a DANDA blow on the body of his cousin Om Parkash. The persons to whom specific injury has been attributed are already facing trial whereas there are no corresponding injuries, which has been attributed to respondents No. 2 to 6, who have been sought to be summoned as additional accused. The statement of complainant does not find any corroboration from the medical records of injureds. It has been specifically stated by complainant that Gian Chand pelted a BRICK bat blow hitting on his head and face but to the utter surprise, there is no corresponding injury as per the MLR of the complainant. Similarly, Om Parkash son of Vasudev is alleged to have inflicted a DANDA blow to his cousin

Om Parkash son of Mool Chand but there is no MLR in respect of Om Parkash, available on the records. As far as Banti wife of Laxman is concerned, she is alleged to have given beatings on the legs of complainant but again there is no such injury as per MLR. No overt act has been specifically attributed either to Om Parkash or Vijay son of Roshan. Similarly, no weapon of offence alleged to have been used by the persons, who are sought to be summoned as additional accused, could be recovered from them during the investigation. It appears that respondents No. 2 to 6 are being dragged by the complainant with ulterior motive just on the ground that they are related to the persons, who are already facing the trial. Thus, it can be safely concluded that there is no prima facie evidence to summon respondents No. 2 to 6 as additional accused to face trial along with co-accused Vinod and others. Moreover, there is no infirmity, illegality or impropriety in the impugned order dated February 13, 2015. Rather, same is absolutely in accordance with law and evidence available on file. As such, impugned order does not call for any interference by this Court.

8. In the light of what has been discussed above, this Court does not find any merit in the revision petition. As such, the same is dismissed.

(JASPAL SINGH)
JUDGE

May 15, 2015
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