

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

CRR No.30 of 2014.
Decided on:-17.11.2015.

Bhopal Singh.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. J.S. Mehndiratta, Advocate
for the petitioner.

Mr. Ashish Yadav, Addl. A.G., Haryana.

Mr. Sudhir Hooda, Advocate
for respondents No.2 and 3.

HARI PAL VERMA, J.

Aggrieved against the order dated 1.10.2013 passed by learned Additional Sessions Judge, Rohtak whereby while accepting the revision petition filed by respondents No.2 and 3, the order of summoning under Section 319 Cr.P.C. dated 24.11.2011 passed by learned Sub Divisional Judicial Magistrate, Meham was set aside, the petitioner has filed the present revision petition.

Learned Magistrate has allowed the application moved by the

petitioner-complainant under Section 319 Cr.P.C. for summoning of respondents No.2 and 3 as additional accused. The summoning of respondents-accused was ordered mainly on the basis of statement of PW1 Bhopal Singh by observing that the statement of complainant Bhopal Singh to the police at the initial stage as well as the MLR conducted by the doctor concerned are sufficient material to presume the involvement of the respondents. However, the respondents challenged the order of summoning dated 24.11.2011 by way of revision petition and learned Additional Sessions Judge, Rohtak accepted the same. It is in the aforesaid circumstances, the petitioner has filed the present revision petition.

Learned counsel for the petitioner has argued that the Additional Sessions Judge has travelled beyond the scope of revisional jurisdiction and the order of summoning of additional accused under Section 319 Cr.PC can only be set aside if it suffers from illegality or a patent defect. But the learned Additional Sessions Judge without returning the said findings, has reversed the well reasoned order passed by learned Magistrate. The revision was preferred only by respondents No.2 and 3 whereas learned Additional Sessions Judge has set aside the order in respect of all the accused as named in the application under Section 319 Cr.PC. The accused, namely, Suresh has not challenged the said order passed by learned Magistrate. Thus, the revisional Court has committed error and no reasoning has been given while reversing the well reasoned order passed by learned Magistrate.

I have heard learned counsel for the parties.

The trial Court has summoned the respondent-accused Naurang and Monu besides one another accused Suresh on the application of the petitioner-complainant under Section 319 Cr.PC. From the report under Section 173 Cr.PC (Annexure P-3), it is clear that the challan was filed against Kushal Pal, Som Pal and Bajrang under Sections 148, 149, 323, 324 and 506 read with Section 34 IPC. Said Naurang has moved an application before the Superintendent of Police for re-investigation of the case. Accordingly, the matter was re-investigated and during this investigation, it was found that Naurang, Suresh and Monu are innocent. The police has recorded the statements of several persons which establishes the fact that Naurang, Suresh and Monu came later on the motorcycle when the dispute was already over. Further more, respondent No.2 Naurang is a Pujari (priest) in Balaji Temple for the last twenty years and his name has falsely been implicated in the case.

The power conferred upon the Court under Section 319 Cr.P.C. is an extraordinary power and should be used very sparingly and only if compelling reasons exist for taking cognizance against the person to be summoned. The Court can summon a person as an accused if complicity of that person in commission of offence is established. Even Parvesh Kumar who appeared as PW2 and is a witness of the prosecution has deposed in his cross-examination that respondent No.2 Naurang is a peace loving person

and in his examination-in-chief, he has nowhere deposed that respondents Naurang, Monu and Suresh have given beating to the complainant. The summoning is not to be issued only on mere existence of prima-facie evidence, rather, as held by Hon'ble Apex Court in the case of ***Hardeep Singh Versus State of Punjab AIR 2009 SC 483***, it has to be more than the prima-facie evidence. The Court will issue notice to a person as an accused if sufficient material is available on record which would otherwise reasonably lead to conviction of the person sought to be summoned.

Considering the fact that the case of the petitioner does not fall within the parameters of ***Hardeep Singh's case (supra)***, I find no merit in the present petition and the same is dismissed.

However, it is made clear that the observations made hereinabove shall not be construed any expression on the merits of the case and are confined only to decide the present controversy at this stage. The trial Court shall decide the case on merits without being influenced with the above observations.

November 17, 2015
Yag Dutt

(HARI PAL VERMA)
JUDGE