

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**CRR No.3248 of 2015 (O&M)****Date of Decision: December 15, 2015**

Jagmal

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rakesh Nehra, Advocate
for the petitioner.

Mr.Anmol Malik, Asstt. Advocate General, Haryana
for the respondent-State.

Mr.N.S.Shekhawat, Advocate
for respondent No.3.

INDERJIT SINGH, J.

The present revision petition has been filed by the petitioner Jagmal against State of Haryana and other respondents under Section 401 Cr.P.C., challenging the impugned order dated 28.07.2015 passed by learned Addl. Sessions Judge, Narnaul, vide which the application under Section 319 Cr.P.C. filed by the petitioner was dismissed.

Notice of motion was issued and learned State counsel as well as learned counsel for respondent No.3 appeared and contested the petition. However, service upon respondent No.2 was dispensed with.

From the record, I find that in the present case FIR has been registered on the statement of Jagmal, in which he stated that on 23.07.2014, at about 9-10 P.M., he went to his plot. Rajbir and Satbir were also with him and thereafter, Ashok also came there. There is house of Sarpanch Ombir in front of his plot. Ombir came outside and was having iron pipe in his hand and he forced the persons who had come to meet him (Jagmal), to ran way from there. Then he also came outside. On the way, Ombir hit him on his right thigh with iron pipe and then hit him on his hand. After that he called his brother Raju @ Raj Kamal, who was also having wooden stick in his hand. As soon as he arrived there, he hit him (complainant) on his chest and back with wooden stick in his hand. After that both brothers hit him badly and inflicted injuries. Raj Kamal @ Raju attacked on his head which hit at the back of his head. Thereafter, Ombir also hit him with the iron pipe in his hand on his head near the ear and then he became unconscious and fell down in the street. After necessary investigation, challan was only presented against Raj Kamal @ Raju and accused Ombir was not challaned.

Jagmal appeared in the witness box in the Court and deposed same facts. An application was filed under Section 319 Cr.P.C. for summoning accused Ombir. Learned Addl. Sessions Judge, Narnail, after discussing the evidence, dismissed the application moved by complainant vide impugned order dated 28.07.2015.

The perusal of the record shows that present respondent

Ombir has been named in the FIR. He was stated to be armed with iron pipe. Specific injuries have been attributed to him. When the complainant Jagmal appeared in the witness box, he deposed as per prosecution version. In no way, it can be held that there is no material before the Court from which it can appear to the Court that Ombir is also involved in the commission of the offence. Rather, the main injury is attributed to Ombir.

Learned counsel for the respondent-Ombir argued that the occurrence took place on 23.07.2014 and the FIR was registered on 27.01.2015. On this argument, learned counsel for the petitioner brought to the notice of this Court that occurrence took place on 23.07.2014 and the injured-complainant remained in the hospital and was operated and discharged on 30.07.2014. Thereafter, DDR was lodged on 31.07.2014 on the basis of statement of the complainant-injured. When the version of the complainant had come by way of DDR on 31.07.2014, then the delay is of only 7 days and it is for the trial Court to see, from the evidence, the effect of this delay. At this stage, explanation is that the injured was operated upon regarding head injuries and he was discharged from the hospital on 30.07.2014. So, only on the basis of this delay, the application under Section 319 Cr.P.C. cannot be dismissed.

Furthermore, if there is any discrepancy in the statement of PW-1 while appearing in the Court, that is also not to be seen minutely as if the Court is deciding the case finally. At this stage, as per law if it appears to the Court that additional accused, for

summoning of whom the application was filed, is involved in the commission of the offence, then the Court should accept that application.

From the perusal of the record, I find that there is sufficient evidence before learned Addl. Sessions Judge, from where it can be held that it appears that Ombir was involved in the commission of the offence. Therefore, the order dated 28.07.2015 passed by learned Addl. Sessions Judge, Narnaul is not as per law and evidence and the same is set aside. The application under Section 319 Cr.P.C. filed by the petitioner is allowed accordingly. Learned trial Court is directed to proceed further after procuring the presence of Ombir, as per law.

Therefore, finding merit in the present petition, the same stands allowed.

However, nothing stated above, in any way, will constitute opinion of this Court on merits of the case.

December 15, 2015
Vgulati

(INDERJIT SINGH)
JUDGE