

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

CRR-3645 of 2014 (O&M)

Date of Decision: November 04, 2015

Suresh Pal

....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJAN GUPTA

Present: Mr.H.N.Mehtani, Advocate
for the petitioner.

Mr.Gaurav Dhir, DAG, Haryana

Rajan Gupta, J (Oral)

In this petition, petitioner has challenged order passed by Sessions Judge, Ambala whereby order passed by the Magistrate dismissing the application under Section 319 Cr.P.C to summon the petitioner as additional accused has been reversed.

An occurrence took place on 8.3.2008. Complainant alleged that accused assaulted her and gave stick blows. Petitioner-Suresh Pal was stated to be accompanied by a co-accused. She filed application under Section 156 (3) Cr.P.C before Judicial Magistrate Ist Class whereafter investigation was ordered. Detailed investigation was carried out. The investigating agency challaned 4 persons, however, gave clean chit to the petitioner. During investigation, petitioner also relied upon certificate issued by Mr.Chhatar Singh, Member of Haryana Public Service Commission, who stated that Suresh Pal was present at his residence on 8.3.2008. During the pendency of trial before the Magistrate, an

application was moved for summoning the petitioner-Suresh Pal and another accused as additional accused. This application was rejected by the Magistrate vide order dated 25.4.2014. Complainant, however, preferred revision petition before the Sessions Judge, Ambala. Said court came to the conclusion that trial court had erred in relying upon the document which did not form part of final report under Section 173 Cr.P.C. Stand of the petitioner before this court is that investigating agency gave its findings after thorough investigation. It came to the firm conclusion that petitioner was not present at the spot at the time of occurrence. According to learned counsel for the petitioner there is no chance of conviction of the petitioner solely on the basis of deposition of the complainant made before the trial court.

I am of the considered view that the order passed by the revisional court is unsustainable. Merely because name of the petitioner figured in the initial version in the FIR and which was reiterated by the complainant in her deposition, this court cannot come to the conclusion that petitioner was accompanying other accused at the time when complainant was allegedly assaulted. Besides, investigating agency on the basis of material collected during investigation came to the conclusion that petitioner was present somewhere else at the time of occurrence. Under the circumstances, impugned order is hereby set-aside. Petition is allowed in these terms.

(Rajan Gupta)
Judge

November 04, 2015
BB