

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No. 404 of 2015 (O&M)
Date of decision:- May 08, 2015

Abdul Rashid

...Petitioner...

versus

Mubarik and others

...Respondents...

CORAM : HON'BLE MR. JUSTICE JASPAL SINGH

Present : Mr. Jangvir Singh Hooda, Advocate,
for the petitioner.

Mr. Charanjit Singh, Addl.A.G., Haryana,
for respondent No.4.

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.

Challenge in this revision petition is to order dated January 20, 2015 passed by Id. Additional Sessions Judge, Mewat whereby an application dated September 23, 2014 moved by the prosecution under Section 319 Cr.P.C. for summoning Mubarik, son of Khushi Mohd., Nusrat, daughter of Khushi Mohd. and Habiban wife of Khushi Mohd., all are residents of Ward No. 8, Punhana, Tehsil Punhana, District Mewat, to stand trial with their co-accused in case bearing FIR No. 274, dated July 12, 2011 (wrongly mentioned as 'April' in impugned order), under Sections 148, 149, 323, 325, 452

307 and 506 IPC, registered at Police Station Punhana, District Mewat, was dismissed.

2. Shortly put the case of prosecution is that on June 12, 2011 at about 7:30/8:00 p.m., Samina, wife of Sarfraj, Talim, son of Sabbir, Azad, son of Ayyub Khan and Jamshida, wife of Shehzad already facing trial accompanied by Mubarik, son of Khushi Mohd., Nusrat, daughter of Khushi Mohd. and Habiban, wife of Kushi Mohd. (now sought to be summoned) armed with Farsas and Chantia etc. by forming an unlawful assembly came to the house of Rashid, son of Fateh Mohd., resident of Punhana and assaulted him and when his brother Sahid tried to rescue him then all the culprits gave beating to him. His hue and cry attracted to Mustak, son of Israil and Hazi Umar Mohd., who came at the spot and got them freed.

4. After the examination of complainant and other witnesses, application under Section 319 (1) Cr.P.C. was moved by the prosecution but finding that there is no additional material to *prima facie* show the involvement of the persons sought to be summoned as an additional accused, the same was dismissed.

5. The contention of learned counsel for the petitioner is that though a specific role has been attributed to the persons sought to be summoned as an additional accused but despite that fact, Id. trial court without application of its mind to the facts, circumstances and evidence available on file has dismissed the application simply on the ground that there is a tendency especially in the area of Nuh that all the persons of opponent group are tried to rope up in the incident of assault. It has further been observed in this case that incident is of

dated June 12, 2011 but for the first time, matter was reported on June 17, 2011 and further that FIR was registered after due inquiry on July 12, 2011 whereas persons now sought to be summoned were found innocent. The observations made by Id. trial court while dismissing application under Section 319 Cr.P.C. are not sustainable in the eyes of law and deserve to be ignored and disbelieved and application is to be decided keeping in view the evidence available on file. As such, impugned order is not sustainable in the eyes of law and is liable to be dismissed and application moved under Section 319 Cr.P.C. deserve to be allowed.

6. This Court has given an anxious thought to the submission made learned counsel for the petitioner and has minutely gone through the record available on file.

7. No doubt, it is pretty settled that while dealing with application under Section 319 Cr.P.C., court should not summon a person as an additional accused and pass an order mechanically merely on the ground that some evidence had come on record showing his/her implication and further that power envisaged under Section 319 Cr.P.C. is to be used sparingly but at the same time, if there is some material available on record *prima facie* establishing his role or participas criminis, he can be summoned as an additional accused to face trial along with the person(s) already facing trial.

8. Adverting to the facts of the case in hand, no doubt, petitioners sought to be summoned as additional accused were declared innocent during investigation of this case and at the time of presentation of report under Section 173 (2) Cr.P.C., their names

were placed in column No. 2 but during the pendency of trial, prosecution examined Abdul Rashid-complainant-injured as well as Mustak.

9. A perusal of their statements reveals that apart from the role attributed to the persons, who are facing trial, it has specifically been unfolded by them that Mubarik gave LATHI blow on the head above the left ear of Abdul Rashid whereas Habban gave SARIYA (iron rod) blow on his head above ear. Nissar, Nusrat and Jamshida also gave slaps and fists blow. Similarly, Mustak, son of Israil also specifically deposed that Mubarik gave a LATHI blow on the head of Abdul Rashid and Habban gave iron rod (SARIYA) blow to Haji Rashid. So, when specific attribution has been made, it should have been taken into consideration by Id. trial court while disposing of application moved under Section 319 Cr.P.C. Apart from it, no *straight jacket* formula can be laid with regard to the observation made by the Id. trial court with regard to alleged tendency especially in the area of Nuh that all the persons of opponent group try to rope-in innocent person(s) in the incident of assault. Id. trial court should have taken into consideration the actual role attributed to the person(s) sought to be summoned or that if there is a *prima facie* evidence to summon them or any of them as additional accused.

10. In the light of what has been discussed above, this Court is of the considered view that impugned order dated January 20, 2015, suffers from various illegalities and infirmities and thus, is not sustainable in the eyes of law. Accordingly, the same is set aside and Id. trial court is directed to reconsider and re-appreciate the evidence

available on file and to pass a fresh order keeping in view the observation made in this order and to dispose of the application afresh, moved under Section 319 Cr.P.C. by the prosecution.

May 08, 2015
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(JASPAL SINGH)
JUDGE