

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

**Crl. Revision No. 462 of 2014 (O&M)
Date of decision : 01.12.2015**

Dilbag Singh

.....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. R.S. Tacoria , Advocate
for the petitioner.

Mr. G.S. Salwara, DAG, Haryana.

Mr. Gautam Dutt, Advocate
for respondents No.2 & 3.

ANITA CHAUDHRY, J.

This revision is directed against the order dated 17.12.2013, passed by the Additional Sessions Judge, Rohtak who dismissed the application filed under Section 319 Cr.P.C.

The facts are necessary. Dilbag Singh complainant is the Lambardar of the village. He has two sons Sunil and Sushil. Dilbag and his son Sunil were going on a motorcycle. Both of them stopped for work near Jangra Furniture House on Delhi-Rohtak Road. Sunil was standing near the motorcycle while

Dilbag went towards shop. In the meantime, a red colour car bearing registration no. HR-15-A-5876 came and stopped near the motorcycle and Sumit and Akshay, sons of Rajender and Ajay son of Devender, resident of village Bohar and one other boy whose name the complainant did not know, came out of the car and started beating Sunil. The complainant moved forward then Sumit son of Rajender fired a shot which hit Sunil's chest. Some more shots were fired. On seeing the firing, the complainant retraced his steps and entered the shop. The remaining persons inflicted injuries with brick and stones. They also entered the shop to kill the complainant but several persons by then had collected and all the four fled in the car. They also threatened the complainant while leaving. The complainant fell unconscious. On regaining consciousness, the matter was reported to the police. Complainant had also mentioned that about 8 – 10 days ago, Sunil had a quarrel with Akshay son of Rajender and that was the reason for the attack. He had also mentioned that some passerby had taken his son to the hospital and he reached the hospital soon thereafter.

The police challaned four persons, leaving out Akshay and Ajay.

The case was committed. Charge was framed and statement of Dilbag Singh was recorded. He named Akshay and

Ajay, making a similar statement as made before the police. He had also mentioned that the earlier incident had occurred with Akshay and that was the reason for the assault. Thereafter, an application under Section 319 Cr.P.C. was filed which has been dismissed.

The trial Court accepted the arguments led on behalf of the accused that Dilbag had named four persons and four persons had been challaned and Akshay and Ajay were not found guilty during investigation and two persons found guilty during investigation and two persons whose statements had been recorded under Section 161 Cr.P.C. had given different names who had been challaned. It observed that Surinder and Jagdish who were eyewitnesses, were yet to be examined and there were contradictions in the statements of the prosecution witnesses. It felt that it was not a case where the extraordinary power should be exercised to summon the additional accused.

I have heard both the sides.

The counsel for the petitioner had urged that while deciding an application under Section 319 Cr.P.C., the Court is required to go into the evidence which is before it and names of Akshay and Ajay were specifically mentioned in the FIR but the police introduced a different story and challaned two other

persons, thereby spoiling the entire case as ultimately the eyewitness would not name them, which would ultimately benefit the other accused as well. It was urged that the Court had relied upon the statement made under Section 161 Cr.P.C. and those statements are not evidence before the Court. It was urged that the complaint does not refer to the presence of any other eyewitness and the two persons have been introduced by the police and no reasons were given by the police for giving them a clean chit and the order be set aside and the application be allowed.

The counsel appearing for respondents no.2 & 3 sought to support the order and urged that the trial Court had gone through the evidence and found contradictions and there were doubts in the versions that had appeared before the police and the police did not challan Akshay and Ajay while Sumit is facing trial before the Juvenile Justice Board. It was urged that there was no infirmity in the order.

At the outset, it may be said that the order passed by the trial Court has to be set aside for the reason that it has considered the statements which have been recorded under Section 161 Cr.P.C. While disposing of the application under Section 319 Cr.P.C., the Court has to appreciate the evidence which comes before it and not what the police had collected

during trial. These two persons had been specifically named in the FIR and a role was assigned to them. The complainant has made serious allegations against the police officials who had investigated the case for introducing a different story.

In the light of the above, the order is set aside. The trial Court is directed to hear the application again and dispose of the same in accordance with the parameters laid down in ***Hardeep Singh Vs. State of Punjab and others (2014)3SCC 92.***

Parties are directed to appear before the trial Court on 17.12.2015.

The revision is allowed.

01.12.2015
sunil

(ANITA CHAUDHRY)
JUDGE