

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR No.4495 of 2015 (O&M)
Date of Decision: November 28, 2015

Ibbar

...Petitioner

VERSUS

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sarfraj Hussain, Advocate
 for the petitioner.

INDERJIT SINGH, J.

The present revision petition has been filed by the petitioner Ibbar against respondents State of Haryana and Jamshed under Section 401 Cr.P.C., challenging the impugned order dated 16.09.2015 passed by learned Addl. Sessions Judge, Palwal, vide which the petitioner has been summoned on application under Section 319 Cr.P.C.

I have heard learned counsel for the petitioner and have gone through the record.

From the record, I find that application under Section 319 Cr.P.C. has been filed by complainant Jamshed through Assistant Public Prosecutor for summoning accused Ibbar, Nasim, Nasir, Irshad, Sattar, Arshad, Majal, Mubarrak, Rahul, Liyakat @ Runni and Islami, to face trial along with the co-accused already facing the trial under

Sections 148, 452, 323, 325, 307, 506 and 379 read with Section 149 IPC.

The brief facts of the case as per the impugned order are as under:-

“The case of the prosecution, in nutshell, is that accused persons in furtherance of their common intention of committing house tress-pass of Jamshed caused simple and grievous injuries which were dangerous to life to injured Jamshed, Sattar, Maina and Rashid followed by giving criminal intimidation and committed theft of gold ornament (hasli), one chaddar belonging to the complainant. The incident had taken place on 12.1.2015 at 6.00 PM in village Ali Mev. The case was originally registered with FIR No.14 dated 15.1.2015 of Bahin Police Station on the basis of statement given by complainant Jamshed against 16 named accused including the present proposed additional accused alleging offence under Sections 148, 452, 323, 325, 307, 506, 379 read with Section 149 IPC. During investigation, the investigating officer filed the challan stating that the proposed additional accused namely Ibbar, Nasim, Nasir, Irshad, Sattar, Arshad, Majal, Mubarrak, Rahul, Liyakat @ Runni and Islami shown in the first information report have not been involved in crime and have been attempted to be falsely implicated in the case at the instance of defecto complainant and filed a report to delete them from array of accused and after completion of investigation, final report was filed against five named accused already facing trial today.”

During the trial, PW-1 Jamshed was examined and the application under Section 319 Cr.P.C. was filed. Learned Addl. Sessions Judge, Palwal vide impugned order dated 16.09.2015, while discussing the evidence and law in detail, dismissed the application qua remaining persons but summoned the present petitioner Ibbar to face trial along with co-accused already facing the trial. Aggrieved from the above-said order, present revision petition has been filed.

As this is a revision petition, this Court is to see whether

the impugned order passed by the Court is as per law and evidence on record. The perusal of the impugned order nowhere shows that the order passed by the Court below is perverse or against the evidence nor there is anything to show that it is against the law. At the time of arguments, learned counsel for the petitioner argued that there is delay of three days in recording the FIR. On similar facts, other persons have not been summoned by the Court. He further argued that injured is not named in the FIR.

As regarding delay, it is to be seen by the trial Court after appreciating the evidence produced before it as to whether the delay has been explained satisfactorily and if not, then what is its affect. It is settled law that the delay in itself is not fatal to the prosecution case. In the cases of delay, the Court is to appreciate the evidence cautiously and carefully. The mere fact that injured is not named in the FIR is no ground to allow the present revision petition. Learned trial Court while summoning present petitioner on application under Section 319 Cr.P.C., and appreciating the evidence held that present petitioner Ibbar gave injury to complainant by using *Balam* and another injury to Rashid. The injury given to Rashid is stated to be grievous, on the basis of which, Section 307 IPC has been invoked. There are five injured persons. The fact that Rashid has not been examined yet, is also not a ground to allow the present revision petition.

As regarding other accused, who have not been summoned, I find that learned Addl. Sessions Judge, Palwal has

discussed about them in the order in detail. Moreover, on this ground also, the impugned order cannot be set aside.

The perusal of the record shows that present petitioner is also named in the FIR. He is stated to be armed with *balam* and injuries including grievous injury is attributed to them. Therefore, learned trial Court from the evidence produced before it, held that it appears to the Court that he is involved in the commission of the offence and has been summoned under Section 319 Cr.P.C. to face trial along with co-accused already facing the trial.

In view of the above discussion, I find that the impugned order dated 16.09.2015 passed by learned Addl. Sessions Judge, Palwal is correct, as per law and does not require any interference from this Court.

Therefore, finding no merit in the present revision petition, the same is dismissed.

November 28, 2015
Vgulati

(INDERJIT SINGH)
JUDGE