

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Misc. No.M-2038 of 2016

.....

Date of decision:30.11.2016

Manoj Kumar

.....Petitioner

v.

State of Haryana

.....Respondents

....

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

Mr. Vikramjit Singh, Additional Advocate General, Haryana for
the respondent-State.

.....

Inderjit Singh, J.

This petition has been filed under Section 482 Cr.P.C. for quashing of the impugned order dated 9.9.2015 (Annexure-P.1) passed by the learned Judicial Magistrate Ist Class, Kurukshetra and the judgment dated 20.11.2015 (Annexure-P.6) passed by the learned Sessions Judge, Kurukshetra, dismissing the revision petition filed against the above impugned order.

Notice of motion was issued in this case.

Mr. Vikramjit Singh, learned Additional Advocate General, Haryana has put in appearance on behalf of the respondent-State and contested this petition.

I have heard learned counsel for the petitioner as well as learned Additional Advocate General, Haryana and have gone through the record.

From the record, I find that the challan has been presented in

this case by Police Station Shahabad against Ashok Kumar in FIR No.254 dated 20.7.2014 registered for the offences under Sections 323 and 325 IPC. A perusal of the record shows that the present petitioner-Manoj Kumar is nowhere named in the FIR, neither he was stated to be armed with any weapon nor he was attributed any injury. Unknown persons were also stated along with the accused-Ashok Kumar. The name of the present petitioner never appeared during the investigation, as the learned counsel for the petitioner further argued that the petitioner was not got joined during the investigation. First time in the Court, the complainant while appearing as PW-1 has named the present petitioner along with other co-accused. PW-1 has stated that at the time of alleged incident, he was not knowing the names of the above said persons. However, when he appeared into the witness box, he specifically named these persons.

From the above facts, I find that there is no mention in the FIR or the name of the present petitioner never came during the investigation, he was not investigated in the matter nor his name was kept in column No.2. Merely at the instance of complainant, who has appeared as PW-1, stating that he had come to know the names of the unknown persons alongwith Ashok Kumar-main accused were Saurav and the present petitioner, is not sufficient to summon the present petitioner under Section 319 Cr.P.C. For summoning additional accused under Section 319 Cr.P.C. it should appear to the Court that there is evidence before the Court and it appears to the Court that the person, who is to be summoned as an additional accused, is involved in the commission of the offence. The evidence should be at that

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stage of somewhat more than *prima facie* case.

The mere fact that there are eight injuries on the person of the injured will not connect the accused-petitioner with the crime nor it will prove that the additional accused had caused the injuries. Therefore, from the above, I find that the order passed by the learned Judicial Magistrate Ist Class, Kurukshetra, while summoning the present petitioner as additional accused and the judgment passed by the learned Sessions Judge, Kurukshetra, dismissing the revision petition are not as per evidence and law and the same are set aside.

Finding merit in the present petition, the same is allowed and the impugned orders qua the present petitioner are set aside.

November 30, 2016.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No