

CRM-M-35855 of 2016

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No. 131

CRM No.M-35855 of 2016

Date of decision: October 07, 2016

Israil @ Israil Khan

.... Petitioner

Versus

State of Haryana and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Karanvir Singh Khehar, Advocate,
for the petitioner.

JASPAL SINGH, J.

The instant petition has been preferred by the petitioner under Section 482 Cr.P.C. for setting aside/quashing of order dated September 14, 2016, passed by the Additional Sessions Judge, Mewat, whereby he has been summoned as additional accused to stand trial along with others in FIR No.509, dated July 30, 2015, under Sections 323, 341, 308, 506, 34 of IPC, registered at Police Station Nuh.

2. Learned counsel for the petitioner submits that petitioner is a Government Servant and has been falsely implicated by alleging that he had

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participated in the occurrence. He was not present in village Ranika, Nuh, District Mewat on the date and time of occurrence. Rather, he was present at Bhawadi, District Alwar, Rajasthan about 40 kms. from the place of occurrence. Therefore, the question of his having participated in the alleged occurrence does not arise. The trial court has failed to consider the fact that after conducting thorough investigation, petitioner was found innocent and the challan was filed only against Saddam and Idrish. Accordingly, learned counsel has prayed that the impugned order be set aside.

3. This court has given an anxious thought to the aforesaid submissions made by learned counsel for the petitioner and perused the record available on file.

4. The instant FIR No.509, dated July 30, 2015, under Sections 323, 341, 308, 506, 34 of IPC, Police Station Nuh has been registered on the basis of statement of Umar Mohammad-complainant to the effect that on July 29, 2013 at about 4-5 p.m., when Sharukh (injured) was going towards his baithak, Altaf and Saddam came and inflicted various serious and grievous injuries due to previous animosity. Sehnaj and complainant reached the spot, but in the meanwhile, accused Basru, Khurshid, Gaffar, Idrish, Israil came to the spot armed with Jailly, Ballam, Gid and stones. Basru gave Ballam blow on the head of Sharukh. Israil gave Jailly blow on the leg of complainant. Accused Gaffar, Idrish and Khurshid gave slaps and fist blows to Sehnaj. The matter was reported and investigated. The Investigating Agency presented the challan against accused Saddam and Idrish, whereas remaining persons were found innocent. Complainant

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appeared as PW4 and named Saddam, Altaf, Basru, Gaffar, Israil, Idrish, Khurshid as assailants. Injured Sharukh (PW6) also named aforesaid persons in his statement. Accordingly, prosecution moved an application under Section 319 Cr.P.C. for summoning of Israil son of Ismail, Gaffar son of Ibrahim, Khurshid son of Abdulla, Altaf son of Tahir, Basru son of Ibrahim, Jahid son of Rashid @ Bashir, Dilshad son of Idrish, as additional accused. The trial court after hearing the learned counsel and perusing the record available, partly allowed the application and Basru & Israil (petitioner) have been ordered to be summoned as additional accused in the instant case, whereas the application qua remaining persons was dismissed. It is well settled law that power under Section 319 Cr.P.C. can be exercised by the court suo motu or on an application by someone including accused already before it, if it is satisfied that any person other than accused has committed an offence and he is to be tried together with the accused. The power under Section 319 Cr.P.C. is conferred on the court to ensure that justice is done to the society by bringing to book all those guilty of an offence. While applying its judicious mind on an application under Section 319 Cr.P.C., the trial court cannot go into microscopic discussion of the evidence. The court is required to see the existence of a strong prima facie case against the alleged accused.

5. As per the contents of the FIR registered by one of the injured, petitioner Israil gave Jailly blow to the right leg of Umar Mohammad-complainant. PW4 and PW6 have also reiterated this version. The medical evidence further fortifies ocular version. Thus, this court is of the considered view that there is incriminating material against the petitioner

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for summoning him in the present case to face trial, inasmuch as, Israil had caused Jailly blow on the leg of the complainant. As far as the 'plea of alibi' taken by the petitioner is concerned, it requires its strict proof before acceptance, which is only possible during trial.

6. In the light of what has been discussed above, this court is of the considered view that impugned order does not suffer from any illegality or infirmity. Accordingly, instant petition is dismissed.

October 07, 2016

Avin/Ankur

**(JASPAL SINGH)
JUDGE**

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No