

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

Criminal Misc. No.M-40866 of 2016

Date of Decision: 07.12.2016

Sunil Kumar

...Petitioner(s)

Versus

State of Haryana & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Sunil Sihag, Advocate
for the petitioner.

HARI PAL VERMA, J.

Prayer in the present petition filed under Section 482 of the Code of Criminal Procedure, 1973 is for quashing the order dated 23.8.2016 passed by learned Additional Sessions Judge, Sirsa, whereby the revision petition filed by the petitioner against the order dated 6.2.2016 passed by learned Judicial Magistrate Ist Class, Ellenabad was dismissed.

Learned Magistrate, vide order dated 6.2.2016 has dismissed the application moved by the petitioner under Section 319 CrPC, seeking summoning of Shakuntla and Rajpal, holding that there is an inherent contradiction in the testimony of the petitioner – Sunil Kumar, as in his statement made before the police, the petitioner-complainant has deposed that at the time of occurrence, respondents no.2 – Shakuntla was having a *danda* in her hand whereas respondent no3-Rajpal was empty handed, however, when the petitioner-complainant appeared in the witness box as PW-1, he has stated that respondents no.2 and 3 were empty handed.

Aggrieved against the order dated 6.2.2016 passed by learned Judicial Magistrate Ist Class, Ellenabad, the petitioner preferred a revision

petition before learned Additional Sessions Judge, Sirsa, however, the same was dismissed vide judgment dated 23.8.2016.

It is in these circumstances, the petitioner has filed the present petition seeking quashing of order dated 23.8.2016.

Learned counsel for the petitioner has argued that though the petitioner had specifically named respondents no.2 and 3, as members of unlawful assembly who entered the house of the petitioner with deadly weapons and caused multiple injuries to him and his mother, but the police has kept them in column no.2 without any basis or enquiry. Even in the MLR, four injuries have been revealed, whereby it can safely be inferred that respondents no.2 and 3 were involved in causing injuries to them. During the investigation, respondents no.2 and 3 have admitted their presence at the scene of occurrence, but still, the police has found them innocent and they have not been chargesheeted. Therefore, summoning of respondents no.2 and 3 is necessary, as they were accused in the case.

I have heard learned counsel for the petitioner.

Admittedly, in the statement of the complainant-petitioner made before the police, he has mentioned the names of respondents no.2 and 3, as the assailants, and alleged that respondents no.2 and 3 along with their co-accused have caused injuries to him as well as his mother. In the said statement made before the police, the complainant has stated that at the time of occurrence, respondent no.1-Shakuntla was having a *danda* in her hand whereas respondent No.3-Rajpal was empty handed. But when he appeared in the witness box as PW-1, he has stated that respondents no.1 and 2 were empty handed. Moreover, the police has thoroughly

investigated the matter regarding the allegations made against the respondents. Thus, there being material contradiction in the statements of the complainant, this Court finds that the learned Magistrate has rightly dismissed the application filed by the petitioner under Section 319 CrPC and therefore, no illegality can be found in the impugned orders passed by the Courts below. In fact, present is a case of limited injuries with unlimited accused, wherein the petitioner-complainant is trying to rope in as many accused as may be possible.

Hon'ble the Apex Court in the case of *Hardeep Singh v. State of Punjab AIR 2009 SC 483* has held that the power under Section 319 CrPC has to be exercised only if the Court is satisfied that the accused so summoned is in all likelihood would be convicted. Thus, power under Section 319 CrPC being discretionary, has to be exercised sparingly, only when there is cogent evidence and the circumstances so desire.

When the facts of the present case are analyzed in the light of judgment of Apex Court in *Hardeep Singh (supra)*, it is found that the petitioner-complainant has clearly failed to make out a case for summoning under Section 319 CrPC. Moreover, there is inherent contradiction in the testimony of the complainant. Therefore, this Court does not find any illegality in the impugned orders passed by the Courts below.

Accordingly, the present petition is dismissed.

December 07, 2016
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(HARI PAL VERMA)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No