

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

**CRR No.1569 of 2016(O&M)
Date of Decision: August 29, 2016**

Rishipal and others

...Petitioners

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.K.B.Raheja, Advocate
for the petitioners.

Mr.Brijesh Sharma, Asstt. Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

The present revision has been filed by the petitioners Rishipal and others against respondent State of Haryana, challenging the order dated 18.03.2016 passed by learned Addl. Sessions Judge, Faridabad, vide which the application filed by the prosecution under Section 319 Cr.P.C. for summoning the petitioners was allowed.

Notice of motion was issued and learned State counsel appeared and contested the petition.

I have heard learned counsel for the petitioners as well as learned State counsel and have gone through the record.

From the record, I find that an application was filed under Section 319 Cr.P.C. by the prosecution for summoning Chet Ram, Rishi Pal,

Balwant, Sukhdev, Jeetu, Surender and Ashok as additional accused. In the application, it is stated that names of all the above-mentioned persons are given in the FIR by the complainant and were also mentioned in the statements of witnesses, given to the police. PW1 Hari Shankar has also disclosed the names of all the above mentioned persons in his evidence before the Court stating about their specific role in the incident dated 05.12.2014. It is further stated that all the above mentioned persons have not been made accused by the Investigating Officer.

In reply to the application, it is stated that they have been falsely implicated in the matter by the complainant as they had no role to play in the alleged occurrence. In the investigation conducted by the police, they were found innocent and have not been challaned by the police. Further, the investigating agency has not even sufficient proof of their involvement in the matter.

Learned Addl. Sessions Judge, Faridabad, vide order dated 18.03.2016, after considering the facts, held that the occurrence took place on 05.12.2014 and the injured was shifted to the hospital on same day. The FIR has been registered on the complaint of Bhawna. It is also stated that from the perusal of the FIR, total 11 accused are named in the FIR. At the time of incident, Kishan Sawrup, Ganga Ram and Laxman rescued Hitesh from the accused persons. MLR of General Hospital, Ballabgarh is also on record and in the said MLR, it is nowhere opined as to whether injuries are dangerous to life or not. Further, opinion of the Medical Board of PGIMS, Rohtak is also on record showing that the Board has opined injury No.1 as dangerous to life. The police has filed challan against six accused namely

However, accused namely Rishi Pal, Chet Ram, Balwant, Sukki son of Rishi Pal, Surender, Ashok and Jeetu alias Jitender have been exonerated by the police by mentioning that there is no proof or evidence against these accused persons and the Court held that Kishan Sawrup, Ganga Ram and Laxman have not been made witnesses by the Investigating Officer as per list of witnesses. Therefore, there are chances of poor investigation on behalf of the Investigating Officer.

The Court below simply in view of the fact that Ved Parkash, Sushil, Rohtash, Siri Chand, Chakkar Pal and Jai Parkash are specifically named in the FIR and also in the deposition of PW-1, however name of accused Ashok has not been mentioned in the FIR, summoned Rishi Pal, Chet Ram, Balwant, Sukki alias Sukhdev, Surender and Jeetu as additional accused under Section 319 Cr.P.C, who are named in the FIR as well as deposition of PW1 Hari Shankar, injured. However, Ashok was not summoned as his name was not in the FIR.

The perusal of the impugned order dated 18.03.2016 shows that the Court has not recorded its satisfaction that it appears to the Court that these additional accused are involved in the commission of the offence. There is also no discussion regarding injuries or the roles attributed to these accused persons. There is also no mention as to how many injuries have been received by the injured. The mere fact that the names of these persons have been mentioned in the FIR and also in the statement of PW-1, is no ground to summon them as additional accused. The challan has been presented against 6 persons and 6 more persons have been summoned by the Court under Section 319 Cr.P.C. without recording its satisfaction.

dated 18.03.2016 passed by learned Addl. Sessions Judge, Faridabad, is not as per law and the same is set aside.

Therefore, finding merit in the present petition, the same is allowed.

The application filed by the prosecution under Section 319 Cr.P.C. is dismissed. However, the prosecution is at liberty to file application under Section 319 Cr.P.C. at a later stage, if some cogent evidence comes on record against any person/accused.

August 29, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No