

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

CRR 3155 of 2015

Date of Decision: August 24, 2016

Gurlal Singh

.....Petitioner

Vs.

Gurnam Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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**Present:- Mr.K.S. Dhaliwal, Advocate
for the petitioner.**

Mr. C.S. Bakshi, Addl.A.G., Haryana.

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M.M.S. BEDI, J. (ORAL)

Petitioner is a complainant who had lodged an FIR on June 9, 2013 alleging that Jaswinder Kaur had purchased 6 acres of land from Pritam Kaur in the year 2012 but he is in possession of said 6 acres of agriculture land. Jaswinder Kaur had filed a civil suit in the Court at Karnal which was pending. On June 8, 2013 at about 9.30 p.m., petitioner along with his son Harvinder Singh and friends of his son, namely, Mamtaj Singh, Devender Singh, Narinder Singh and Gagandeep Singh started from their fields in their Safari for their home situated at Village Dera Balu. When they reached in front of the Dera they found two motorcycles parked on the road. As per the allegations in the FIR, Major Singh, Charat Singh armed

with gandasi, Ajaib Singh armed with Takuva, Karan Singh armed with a sword, Gurnam Singh and Gurmukh Singh armed with gandas, Sahib Singh with a sword, Gulab Singh with an iron rod and Jaswinder Kaur with a lathi in their hands were present there. They made the complainant party to stop the vehicle. Gurnam Singh and Jaswinder Kaur raised an alarm to teach them a lesson for not vacating their land and thereafter all the accused persons in furtherance of their common intention opened attack upon them and caused multiple grievous injuries to them. Thereafter the accused persons fled away from the spot along with their weapons. The injured were taken to the hospital by the brother of the complainant. Harvinder Singh succumbed to his injuries on way to the hospital. The other injured were medico legally examined.

During the course of investigation, Major Singh, Charat Singh, Ajaib Singh and Karanjeet Singh @ Karan Singh were arrested and challan was presented against only these four accused. After examination of complainant Gurlal Singh as PW1, an application under Section 319 Cr.P.C. was filed for summoning Gurnam Singh son of Bud Singh, Sahab Singh, Gurmukh Singh, Gurnam Singh son of Sewa Singh, Gulab Singh and Jasvinder Kaur as additional accused. The said application was dismissed by the trial Court on July 28, 2015. The said order was challenged by filing the present revision petition.

Counsel for the petitioner was asked on October 13, 2015 whether the other two material witnesses Gagandeep Singh and Mantaj Singh had been examined. It was informed that their evidence had not been completed. It was observed in the order dated October 13, 2015 that it will

be open to the petitioner to move a fresh application under Section 319 Cr.P.C. on the basis of the statements of Gagandeep Singh and Mantaj Singh as the said statements might have a corroborative value to the statement of PW1 Gurlal Singh.

Second application under Section 319 Cr.P.C. was also filed after the examination of PW10 Mantaj Singh and PW11 Gagandeep Singh. The trial Court again dismissed the application under Section 319 Cr.P.C., vide order annexure P-8. The observations of the learned trial Court is to the following effect:-

“I have also gone through the statement of PW1 Gurlal Singh, PW10 Mantaj Singh and PW11 Gagandeep Singh which reveals that no specific role has been attributed to any of the six persons now sought to be summoned as additional accused. So, no fresh evidence has come on the file to warrant summoning of the said six persons as additional accused to face trial along with the challaned accused.”

Learned counsel for the petitioner has submitted that if the allegations in the FIR and the statements of PW1 Gurlal Singh, PW10 Mantaj Singh and PW11 Gagandeep Singh are carefully scrutinized, it is apparent that there is sufficient material available on the record which could warrant conviction of all the accused including respondents No.1 to 6.

With the assistance of counsel for the petitioner and the State counsel, I have carefully gone through the contents of the FIR, statements of PW1 Gurlal Singh, PW10 Mantaj Singh and PW11 Gagandeep Singh

collectively and found that the role attributed to the additional accused sought to be impleaded on analysis is to the following effect:-

S. No.	Name of respondent	Attribution in FIR got recorded by Gurlal Singh	Attribution in Statement of PW1 Gurlal Singh	Attribution in statement of PW10 Mantaj Singh	Attribution in statement of PW11 Gagandeep Singh.
1.	Gurnam Singh S/o Bud Singh	1. Raised Lalkara 2. all accused pulled complainant and injured. 3. Gandasi blow on the head of Gurlal Singh PW1 4. Gandasi blow on the back of the head of Harwinder Singh.	1. Armed with Gandasi 2. Raised Lalkara 3. No specific injury and only general allegations that all opened attack with respective weapons & dragged out the complainant and others from vehicle.	No specific injury.	1. Gandasi blow on the head of Gurlal Singh. 2. Gandasi blow on the head of Mantaj Singh PW10. 3. No specific injury on the person of Harwinder Singh.
2.	Sahab Singh S/o Bud Singh	1. Sword blow on the right of the head of PW1 Gurlal Singh. 2. Sword blow on forehead of Harwinder Singh.	1. Armed with sword. 2. No specific injury and only general allegation that all opened attack with respective weapons & dragged out	No specific injury.	No specific injury.

			the complainant and others from vehicle.		
3.	Gurmukh Singh S/o Bud Singh	No even single specific injury.	1. Armed with Gandasi. 2. No specific injury.	No specific injury.	No specific injury.
4.	Gurnam Singh S/o Sewa Singh	No even single specific injury.	No specific injury.	No specific injury.	No specific injury.
5.	Gulab Singh S/o Gurnam Singh	No even single specific injury.	No specific injury.	1. Iron rod on the left shoulder of PW10.	No specific injury.
6.	Jaswinder Kaur W/o Sultan Singh	1. Raised Lalkara. 2. Danda blow on the right hand of PW1 Gurlal Singh	1. Raised Lalkara. 2. No specific injury.	1. Raised Lalkara. 2. No specific injury.	1. Raised Lalkara. 2. No specific injury.

Copies of the statements of PW1 Gurlal Singh, PW10 Mantaj Singh and PW11 Gagandeep Singh have been placed on record as annexures P-3, P-6 and P-7, respectively. A careful perusal of the testimony of all the witnesses in context to the allegations in the FIR, I am of the considered opinion that so far as Sahab Singh, Gurmukh Singh, Gurnam Singh son of Sewa Singh, Gulab Singh and Jaswinder Kaur are concerned, they were allegedly present as per the testimony of the witnesses but no specific injury has been attributed to the said five accused on the person of deceased or any injured witness.

So far as respondent No.1 Gurnam Singh son of Bud Singh is concerned, as per the FIR, he had been attributed gandasi blow on PW1

Gurlal Singh and at the back of Harvinder Singh, deceased. Gurnam Singh son of Bud Singh has no doubt been attributed specific injury on the head of Gurlal Singh as member of unlawful assembly and to Gagandeep Singh PW11, has corroborated the allegations in the FIR. There is prima facie evidence available against Gurnam Singh son of Bud Singh sufficient enough to try him as an additional accused with the other accused. No doubt the prosecution has by now recorded the statements of all the prosecution witnesses but the material warranting summoning of Gurnam Singh son of Bud Singh was brought on the record in the statements of PW1 Gurlal Singh and PW11 Gagandeep Singh whereas the first application under Section 319 Cr.P.C. has been dismissed after the examination of PW1 Gurlal Singh.

In view of the above, application under Section 319 Cr.P.C. could have been allowed so far as respondent No.1 Gurnam Singh son of Bud Singh is concerned, but so far as respondents No.2 to 6, i.e. Sahab Singh, Gurmukh Singh, Gurnam Singh son of Sewa Singh, Gulab Singh and Jaswinder Kaur are concerned, the application under Section 319 Cr.P.C. deserved to be dismissed without prejudice to the rights of the complainant to avail any other legal remedy, in accordance with law.

The petition is partly allowed qua respondent No.1 Gurnam Singh son of Bud Singh whereas it is dismissed qua respondents No.2 to 6 i.e. Sahab Singh, Gurmukh Singh, Gurnam Singh son of Sewa Singh, Gulab Singh and Jaswinder Kaur. The impugned orders dated July 28, 2015 and December 11, 2015 are partly set aside qua respondent No.1 only. The trial Court will proceed against said Gurnam Singh son of Bud Singh as additional accused in accordance with law. It will be open to the trial Court

to separate the trial in case deemed appropriate in the interest of justice to avoid prejudice to the accused who are already in custody.

August 24, 2016
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether Reportable:	Yes/No.