

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

**CRR No. 3910 of 2014 (O&M)
Date of decision : 10.02.2016**

Shakuntala

.....Petitioner(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM: HON'BLE MRS. JUSTICE ANITA CHAUDHRY

Present: Mr. Ramendru Chauhan, Advocate
for the petitioner.

Ms. Dimple Jain, AAG, Haryana.

Mr. R.A. Sheoran, Advocate
for respondent no.3.

ANITA CHAUDHRY, J.

The complainant has impugned the order dated 10.11.2014, vide which application filed under Section 319 Cr.P.C. had been dismissed.

It is necessary to first notice the allegations made. The complainant's husband, Vikas and Virender are real brothers. Both the brothers reside separately and have their houses near the fields. Jagmal and Ram Niwas who are her father-in-law in relation are also residing in the fields. The complainant's husband

his brother and her father-in-law had gone to bring fodder from the nearby fields. In the intervening night of 1st and 2nd May, 2014. she along with her daughter were sleeping on a cot outside their house. A tractor stopped near their house. She noticed two persons on it. One of the person came near her cot and misbehaved with her. She caught hold of his hand but he torn her shirt and she identified him as Ashok s/o Ishwar of her village. She raised cries. Meanwhile, Ashok called out to his brother Manjeet to bring the tractor. He threatened that he would silence her. Sunita, sister-in-law of the complainant came running. Manjeet, brother of Ashok brought the tractor near. Ashok got on to the driver seat and criminally intimidated them and ran over the tractor. Ashok struck the tractor also against Suresh and thereafter, Ashok and Manjeet fled from the spot. The condition of Suresh became serious and she was firstly admitted to the Government Hospital, Bhiwani and thereafter, referred to PGI, Rohtak.

The police investigated the matter and filed the challan against Ashok under Section 302/307/452 IPC. The evidence had started and the complainant had given her statement when the application under Section 319 Cr.P.C. was filed by the complainant, duly forwarded by the Public Prosecutor.

The complainant had sought the summoning of Manjeet as an additional accused. The prayer was rejected by the

Court below and it is against that order, the petitioner has approached this Court.

I have heard both the sides.

The counsel for the petitioner contends that the police had filed the challan only against Ashok and Manjeet was present and he should have also been summoned.

Responding to the arguments, the counsel appearing for the respondent had urged that it was a case of road side accident which has been converted under Section 302 IPC. It was urged that the injured themselves had mentioned it to be a case of road side accident and minor injuries were suffered as would be clear from the MLRs available on record. The counsel refers to the affidavit given by Dr. Anant Vasotia and has urged that the alleged history of road side accident was stated. It was urged that in the postmortem report, there was no injury on Suresh Devi and no role was attributed to Manjeet.

The Apex Court in Hardeep Singh Vs. State of Punjab and others 2014(3) SCC 92 had examined the case law and while answering question no.4 had observed as under:-

"A. Though under [Section 319\(4\)\(b\)](#) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for

summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different."

A person can be summoned only where strong or cogent evidence occurs against a person from the evidence that is laid before the Court. The test has to be applied is one which is more than prima facie case. No overt act was attributed to Manjeet. There is a contradiction in the medical evidence and the statement that was given by the complainant which will have to be tested by the trial Court after the complete evidence. The trial Court had found that the evidence which was available was not sufficient to even prima facie show the complicity of the person sought to be summoned and had rejected the application. The trial Court had even doubted that Manjeet was present on the spot. Perhaps he was named as he was the real brother of Ashok. The police had investigated the matter and had placed his name in column no.2. The prosecution did not bring any material which

could have been made the basis to invoke the power under Section 319 Cr.P.C. I find no infirmity in the order. There was no further material before the Court after the charge-sheet had been filed. The petition lacks merit and is dismissed.

10.02.2016

sunil

(ANITA CHAUDHRY)
JUDGE