

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

CRR No.514 of 2014

Date of decision: 6th September, 2016

Sher Singh

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Deepender Singh, Advocate
for the petitioner.

Mr. Deepak Sabharwal, Addl. Advocate General, Haryana
for respondent No.1/State.

Mr. Shiv Kumar, Advocate for respondents No.2 and 3.

FATEH DEEP SINGH, J.

This is a revision preferred by aggrieved complainant Sher Singh against orders dated 16.12.2013 of the Court of learned Additional Sessions Judge, Palwal whereby in case bearing FIR No.170 dated 14.07.2012 under Sections 148/149/323/325/452/295/307/506 IPC and Section 25 of the Arms Act pertaining to Police Station Chandhat, District Faridabad, learned trial Court dismissed the application under Section 319 Cr.P.C. moved by the petitioner for summoning of Sunder and Hemraj, respondents No.2 and 3 respectively as additional accused.

After hearing Mr. Deepender Singh, Advocate for the petitioner; Mr. Deepak Sabharwal, Additional Advocate General,

Haryana on behalf of the State/respondent No.1 and Mr. Shiv Kumar, Advocate representing respondents No.2 and 3 and perusing the records of the case.

From the aggressive and contentious arguments spelled out by the two sides, it permeates that the present case was got registered on the statement of the complainant Sher Singh, who along with Sube Singh and Laxman were injured on 13.07.2012 and were got admitted in Escorts Hospital & Research Centre Ltd., Faridabad and where on the basis of telephonic message ASI Ramchander recorded statement of Sher Singh wherein he alleged that on 12.07.2012 an altercation had taken place between the families of the complainant and the accused, the latter being neighbour of the complainant side, over flowing of water near their house. On 13.07.2012 while Sube Singh and Laxman were smoking Hukka in the gallery of their house, accused Sukhan, Hemraj, Suraj, Dharam, Parveen, Sunder and Mohan along with 8/10 other persons who all were armed with lathis, iron rods, pistols, dandas etc. forcibly trespassed into the house of the complainant. Suraj fired from his pistol which nearly missed the complainant. Sunder gave three blows by iron rod on the right leg of complainant Sher Singh. Sukhan gave lathi blow on the right side of neck of the complainant. Parveen gave a lathi blow on the right side of his neck along with another blow on his head whereas Hemraj gave iron rod blow on the right hand of Laxman. Sukhan gave lathi blow on the right hand of Laxman. Mohan gave a

lathi blow on the back of Laxman and in the process they also caused injuries to Sube Singh and other persons from the side of the complainant.

During the course of treatment on the person of Laxman, the doctor found fracture of both bones of left forearm and on the person of Sher Singh the doctor opined displaced fractures of third shaft of right tibia and fibula and a fracture of proximal shaft of right fibula. Upon investigations and completion of the same, the police challaned Suraj, Parveen alias Chhotu whereas Sunder and Hemraj were found to be innocent. It was after recording of the statement of PW-1 Sher Singh complainant and his cross-examination, the prosecution moved an application under Section 319 Cr.P.C. for summoning of the remaining persons so named as additional accused and which stood dismissed.

The law as to summoning of additional persons as accused has been well laid down in the case of **“Hardeep Singh v. State of Punjab’ 2014(1) RCR (Criminal) 623”** whereby the Hon’ble Supreme Court has drawn following conclusions:

“54. To answer the questions and to resolve the impediment that is being faced by the trial courts in exercising of powers under Section 319 Cr.P.C., the issue has to be investigated by examining the circumstances which give rise to a situation for the court to invoke such powers. The circumstances that lead to such inference being drawn up by the court for summoning a person arise

out of the availability of the facts and material that comes up before the court and are made the basis for summoning such a person as an accomplice to the offence alleged to have been committed. The material should disclose the complicity of the person in the commission of the offence which has to be the material that appears from the evidence during the course of any inquiry into or trial of offence. The words as used in Section 319 Cr.P.C. indicate that the material has to be “whereit appears from the evidence” before the court.

53. Thus, the application of the provisions of Section 319 Cr.P.C., at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 Cr.P.C. can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to hereinabove, adding a person as an accused, whose name has been mentioned in Column 2 of the charge sheet or any other person who might be an accomplice.

109. Thus, it is evident that power under Section 319 Cr.P.C. can be exercised against a person not subjected to investigation, or a person placed in the Column 2 of the Charge-Sheet and against whom cognizance had not been taken, or a person who has been discharged. However, concerning a person who has been discharged, no proceedings can be commenced against him directly under Section 319 Cr.P.C. without taking recourse to provisions of Section 300(5) read with Section 398 Cr.P.C.

A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh.”

As has been contended from the side of the petitioner, the FIR (Annexure P1) is a document first in point of time lodged on the statement of Sher Singh who has also been examined as PW-1 at the trial and wherein specific attribution has been made against Sunder who is alleged to have given three blows by iron rod on the right leg of Sher Singh and Hemraj is alleged to have given iron rod blows on the right hand of Laxman. The same is sought to be corroborated by the medical evidence which bears out fractures at these places of receipt of injuries. It is also well elicited in the report under Section 173 Cr.P.C. to this effect but how these persons have been placed in column No.2 of this report is anybody's guess. Besides this, testimony of injured complainant PW-1 Sher Singh on oath has reiterated the allegations against Sunder and Hemraj and their roles in commission of the offence. Learned counsel for the respondents could not bear out anything adverse that has come in the cross-examination of this witness to put to doubt its

veracity at this point of time. The learned trial Court in the impugned order in paragraph No.8 on mere surmises has held that a perusal of the statement of PW-1 shows that nothing incriminating has come on the file implicating the present accused persons and merely on the statement of PW-1 that the alleged accused were also along with the accused is not sufficient, certainly is too preposterous interpretation of the evidence which has come on the record at the trial. The trial Court at this juncture is not supposed to evaluate with arithmetical precision if such an evidence was fit for conviction of the accused. At the most at that very juncture, the Court is supposed to go by the principle of prima facie case, as has been the proposition laid down in **Hardip Singh's case** (ibid). To the mind of this Court, sufficient evidence has been adduced before this Court which is corroborated by medical evidence placed on the file to corroborate these allegations. The trial Court has sought to venture in the impugned orders that the police has investigated thoroughly the case and nothing could be shown by the applicant (petitioner in the present case) that there is any faulty investigation by the police. Certainly the Court below has gone beyond what it was supposed to evaluate at that very point of time and how the Court has come to the conclusion that nothing has come on the file to prove direct implication of the persons so sought to be summoned as additional accused and has come to a wholly perverse conclusion that their involvement is not made out when it is otherwise right from the

inception of recording of statement of the complainant, registration of the FIR as well as in the challan and testimony in Court, is in itself sufficient evidence for the Court to take cognizance of the same. The impugned order certainly suffers from serious illegality and perversity and needs to be set aside by way of acceptance of the present revision petition whereby the impugned order dated 16.12.2013 is set aside and the matter is sent back to the trial Court to proceed ahead into it as per law.

The revision petition stands disposed off accordingly.

Records be sent back.

(FATEH DEEP SINGH)
JUDGE

September 6, 2016

rps

Whether speaking/reasoned	Yes/No
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Whether reportable	Yes/No
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