

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

CRR No.3238 of 2016.
Decided on:-14.09.2016.

Nawab.

.....Petitioner.

Versus

State of Haryana and others

.....Respondents.

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

Present:- Mr. R.K. Handa, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed present revision petition against order dated 17.5.2016 passed by learned Additional Sessions Judge, Mewat whereby application under Section 319 Cr.PC filed by the petitioner-complainant for summoning of respondents No.2 to 8, namely, Mufeed, Daud, Ismial, Gaggal, Harun, Jumma and Waheed as additional accused, was dismissed.

Mr. R.K. Handa, learned counsel for the petitioner has argued that police has submitted Challan under Section 173 Cr.PC only against accused Abbas, Lakhpat, Imran, Rajosa and Wasim whereas respondents No.2 to 8 were declared innocent by the police despite there being specific allegations mentioned against them in the FIR. Charge has been framed only against accused Abbas, Lakhpat, Imran, Rajosa and Wasim. The persons named in the application seeking summoning as additional accused were

also involved in the case. Therefore, the additional accused were liable to be summoned to face trial. Respondents No.2 to 8 were kept in Column No.2. The petitioner-complainant has appeared in the witness box as PW5 and in his examination, he has clearly stated that respondents No.2 to 8 were present at the time of occurrence and had actively participated in the commission of crime. However, the trial Court has illegally dismissed the said application.

Learned counsel for the petitioner has further argued that respondents No.2 to 8 were members of the unlawful assembly and the trial Court has wrongly accepted the plea of *alibi* of the defence. The plea of *alibi* is not available at the initial stage and it is only during the trial, such plea can be established. In this manner, the trial Court has pre-judged the issue before trial.

I have heard learned counsel for the petitioner.

The power conferred upon the Court under Section 319 Cr.P.C. is an extraordinary power and should be used very sparingly and only if compelling reasons exist for taking cognizance against the person to be summoned. The Court can summon a person as an accused if complicity of that person in commission of offence is established.

In the case in hand, the occurrence had allegedly taken place on 15.2.2014 whereas the FIR in question was lodged on 23.2.2014. Moreover, name of respondent No.8 Wahid did not find mention in the FIR despite the fact that the same was registered after 8 days of the incident. During

investigation, respondents No.5 and 6 Gaggal and Harun were found somewhere else at the time of alleged occurrence. Similarly, no specific role has been attributed to respondents No.2, 3, 4, 6 and 7, namely, Mufeed, Daud, Ismial, Harun and Jumma respectively. The petitioner has tried to built a case of limited injuries, but with unlimited accused which cannot be accepted in the circumstances of the case. Deceased Habbu Khan had received only 4 injuries and these injuries cannot be caused by 20 persons. Five accused are already facing trial and the complainant has attributed specific role to them. Four accused are absconding from trial. The petitioner now intends to summon respondents No.2 to 8 but without explaining as to in what manner, the additional accused sought to be summoned have caused injuries. The summoning is not to be issued only on mere existence of prima-facie evidence, rather, as held by Hon'ble Apex Court in the case of ***Hardeep Singh Versus State of Punjab AIR 2009 SC 483***, it has to be more than the prima-facie evidence. The Court will issue summoning of a person as an accused only if sufficient material is made available on record which, would otherwise reasonably lead to conviction of the person sought to be summoned. But in the case in hand, no such material is available on record which may warrant summoning of respondents No.2 to 8 as additional accused.

Considering the fact that the case of the petitioner does not fall within the parameters of ***Hardeep Singh's case (supra)***, this Court does not find any infirmity in the impugned order dated 17.5.2016 passed by learned

Additional Sessions Judge, Mewat. Accordingly, affirming the impugned order, the present petition, being devoid of any merit, is dismissed.

However, it is made clear that the observations made hereinabove shall not construe any expression on the merits of the case and are confined only to decide the present controversy at this stage. The trial Court shall decide the case on the basis of evidence available on record.

September 14, 2016
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes / No

Whether Reportable: Yes / No