

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

CRR No. 527 of 2014

Date of decision : 25.04.2016

Nipun Diwan

....Petitioner

V/s

State of Haryana & anr.

....Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. R.S. Rai, Sr. Advocate with
Mr. Dilpreet Singh, Advocate for the petitioner.

Mr. Sushil Gautam, DAG Haryana.

Mr. Rampal Verma, Advocate for respondent no. 2.

RAJAN GUPTA J.

Petitioner is aggrieved against order dated 28.01.2014 passed by Sessions Judge, Jind whereby he has been summoned under section 319 Cr.P.C. to face trial for commission of offence under sections 302, 307, 148, 149, 427, 212, 120-B read with section 27 of the Arms Act.

Learned counsel for the petitioner submits that petitioner has been summoned as an additional accused to face trial. He contends that when complainant stepped into the witness box as PW-1, he named the petitioner alongwith other accused. On the basis of this statement, petitioner has been summoned under section 319 Cr.P.C. According to him, trial court without appreciating the evidence on record has wrongly summoned the petitioner. Thus, impugned order deserves to be quashed.

Prayer has been opposed by learned counsel appearing for respondent no. 2. He submits that court below after appreciating the evidence on record has rightly summoned the petitioner as additional accused.

I have heard learned counsel for the parties.

Brief factual background of the case is that on 22.12.2012 complainant Paramjeet Singh alongwith his father Sahab Singh had gone to meet Bhupender Singh who owns a plot in Shiv Colony, Safidon. When they were standing near the plot where construction was going on at that time, accused Nipun Diwan armed with a gun came there. Number of persons from the accused side also came on the spot armed with sharp edged weapons. Thereafter, accused Nipun Diwan fired shots from his gun which hit his father Sahab Singh on the left side of head and little finger of left hand. Other accused with their respective weapons also caused injuries to Dharampal, Pardeep and Lakhwinder Singh who were present on the spot. On raising hue and cry, all the accused fled from the spot alongwith their respective weapons. They also caused damage to the motor-cycles and cars parked nearby the scene of occurrence. Motive behind this was previous enmity as accused Nipun Diwan owns a plot adjoining that of Amrik Singh and the *Khata* of both the plots was joint. Accused Nipun Diwan wanted to take forcible possession of the plot of Amrik Singh. Injured were later taken to General hospital, Safidon for treatment. However, his father Sahab Singh succumbed to his injuries shortly thereafter. On this statement, FIR was lodged and investigation ensued. After completion of investigation, challan against the twelve accused was

presented before the competent court. Petitioner alongwith eight persons were shown in column No. 2 in the report under section 173 Cr.P.C. On consideration of preliminary evidence, charge was framed against the accused under various sections. During pendency of trial, Paramjeet Singh (respondent no. 2 herein) deposed as PW-1. On the basis of his statement, application was moved by the prosecution for summoning additional accused namely Bipun Diwan, Narwel Singh, Bhagwant Singh, Mahinder Singh and Mintu Kapoor in view of provisions of section 319 Cr.P.C. Trial court, however, partly allowed the application and summoned only petitioner as additional accused. With regard to summoning of other accused, trial court rejected the plea observing that allegations leveled against them are vague and not specific. I find no infirmity with the order. Plea of alibi raised at this stage is not tenable. The witness namely Paramjit Singh, who is eye-witness of the crime attributed specific role to the petitioner. Besides motive of the crime is stated to be a property dispute of Nipun Diwan with complainant side. Allegation against him is that he fired the bullet which pierced the head of father of the complainant. In my considered view, evidence on record is sufficient for the purpose of summoning the petitioner in exercise of power under section 319 Cr.P.C. Order passed by the court below is in consonance with the parameters laid down by Hon'ble Supreme court in *Hardeep Singh vs. State of Punjab & ors.* 2014(1) RCR (Crl.) 623(SC). Stand that petitioner was not present at the spot and conducting some transaction in the bank cannot be accepted at this stage as same is in the nature of defence. I, thus, find no ground to interfere.

Dismissed.

April 25, 2016

Ajay

(RAJAN GUPTA)
JUDGE