

118 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No. 4011 of 2016
DECIDED ON: NOVEMBER 07, 2016

UMAR MOHAMMAD

.....PETITIONER

VERSUS

STATE OF HARYANA & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Bijender Dhankhar, Advocate
for the petitioner.

JASPAL SINGH, J

Challenge in this revision petition is to the order dated September 14, 2016 passed by learned Additional Sessions Judge, Mewat, whereby, an application filed by the prosecution under Section 319 of the Code of Criminal Procedure (for short 'Code') for summoning respondents No.2 to 6 i.e Gaffar, Khurshid, Altaf, Jahid and Dilshad; has been dismissed whereas, it has been allowed qua Israil and Basru.

2. Brief facts necessary for the disposal of instant petition are that the petitioner has got lodged an FIR No. 509, dated July 30, 2015 at Police Station Nuh, Mewat. It was initially registered under Sections 323, 341, 506 and 34 IPC. The above-said FIR was registered on the basis of statement of petitioner- Umar Mohammad. The true translated version of which reads as under:

“Statement of Umar Mohammad son of Noor Mohammad Mev

resident of Ranika Police Station Nuh District Mewat aged 65 years State that I am permanent resident of aforesaid address and an agriculturist by profession. We have an rivalry dispute with Basru and Gaffar sons of Ibrahim Mev resident of Ranika on account of land. On dated 29.07.2015 at about 4-5 o'clock in the evening, my grandson Shahrukh son of Khalil was going to Baithak from his house then due to old rivalry after stopping Shahrukh on the way, Altaf son of Tahir and Saddam son of Nazir Mev residents of Ranika started beating Shahrukh with kicks-fist blows, that on seeing the quarrel Shehnaz daughter of Jahangir and me reached by running, then in the meantime Basru son of Khurshid son of Abdullah and Gaffar son of Ibrahim and Idrish and Israil son of Ismail Mev residents of Ranika came one after another armed with jelly, ballam and stones in their hands and immediately on coming Basru gave ballam blow, which he was holding in his hands on the head of Shahrukh and Israil gave a jelly blow which he was holding in his hands on my right foot and my granddaughter Shehnaz was given slapped-fist blows by Gaffar, Idrish and Khurshid by catching Thereafter these persons gave many kicks-fist blows to us after felling us on the ground. We raised noise of mar-diya, mar-diya, then Aslam son of Ibrahim Mev and Jamil son of Noor Mohammad, my brother and others and Panjesi got us rescued from aforesaid persons by reaching on the spot. While going, they threatened us of killing in the future, thereafter, we were got admitted by our family members in Government Hospital Nuh for treatment, we got the first aid and Shahrukh was referred to Delhi Trauma Centre Delhi due to more injuries on the head, where he was got treated and now we were coming to Chowki for taking action, that you met us on the way. I have got recorded my statement to you, heard, same is correct. Action be taken Sd/- Umar Mohammad attested Dharmender HC/Police Post, Akera.”

3. During the investigation of the case offence under Section 307 IPC

added. However subsequent thereto, after obtaining the opinion of the doctor an

offence under Section 307 IPC was diluted to an offence under Section 308 IPC. Ultimately, after completion of investigation, report under Section 173 of the Code has been presented under Sections 323, 341, 506, 308 and 34 IPC only against two persons i.e. Saddam and Idrish.

4. After the completion of investigation and framing of charges for *prima-facie* commission of the afore-said offences, prosecution examined Umar Mohammad-complainant as PW-4 and Shahrukh Khan one of the injured as PW-6, who supported the case of the prosecution. After recording the statements of afore-said Pws, prosecution moved an application under Section 319 of the Code for summoning Gaffar, Khurshid, Altaf, Jahid, Dilshad (respondents No.2 to 6), Israil and Basru to stand trial along-with their co-accused, alleging that specific role has been assigned to them and further that they actively participated in the occurrence and caused injuries to the complainant party.

5. Aggrieved against the dismissal of application under Section 319 of the Code qua respondents No.2 to 6, petitioner approached this Court by way of instant revision petition.

6. While assailing the impugned order, it has been argued with vehemence by learned counsel for the petitioner that the same is absolutely against the evidence available on file and settled canons of law. Mis-appreciation of evidence available on record has resulted into miscarriage of justice. The impugned order is totally based upon conjectures and surmises to the extent of dismissal of an application under Section 319 of the Code qua respondents No.2 to 6. In fact, it has been categorically stated by the petitioner/complainant as well as Shahrukh Khan-PW-6 one of the injured that

respondents No.2 to 6 actively participated in the occurrence and caused injuries to them.

7. Moreover, it has been categorically stated by the complainant/petitioner that on July 29, 2015 at about 4/5.00 PM, Shahrukh was going towards his baithak, when he was accosted by Altaf and Saddam on account of old enmity and they started giving beatings to him with no fault on his part. On seeing this, Sehnaj and the complainant reached the spot but in the meanwhile, Basru, Khurshid, Gaffar, Idrish, Israil came attracted to the spot while armed with Jailly, Ballam, Gid and stones. Basru dealt a ballam blow on the head of Shahrukh whereas, Israil inflicted a Jailly blow on the leg of complainant. The other accused also gave slaps and fist blows to Sehnaj. Thus *prima-facie* active participation of respondents No.2 to 6 stands proved in the occurrence. Thus, they are also liable to be tried as an additional accused for the commission of offences under Sections 323, 341, 506, 308 and 34 IPC.

8. After bestowing due consideration to the afore-said submissions made by learned counsel for the petitioner and scrutinizing the impugned order as well as statements of witnesses available on record, this Court does not find any merit or factual weight therein.

9. The scope and jurisdiction of powers conferred under Section 319 of the Code was considered by Hon'ble Apex Court in the case of **Rajendra Singh vs. State of U.P. (2007) 3 SCC (Criminal) 375**; in which following observation was made:

“The power under Section 319 Cr.P.C. is conferred on the court to ensure that justice is done to the society by bringing to book all those guilty of an offence. One of the aims and purpose of the criminal justice system is to maintain social order. It is necessary in that

context to ensure that no one who appears to be guilty escapes a proper trial in relation to that guilt. There is also a duty to render justice to the victim of the offence. It is in recognition of this that Cr.P.C has specifically conferred a power on the Court to proceed against others not arrayed as accused in the circumstances set out by Section 319 Cr.P.C. It is a salutary power enabling the discharge of a Court's obligation to the society to bring to book all those guilty of a crime.

While applying its judicious mind on an application under Section 319 Cr.P.C. the trial Court cannot go into microscopic discussion of the evidence. It is required to see the existence of a strong prima facie case against the alleged accused. At the initial stage of proceedings against the person, the trial Court is not concerned with the issue whether the trial would conclude with a conviction or not. Since the provision of Section 319(4)(a) envisages a fresh trial for the newly added accused, fresh evidence needs to be recorded, the evidence so recorded has to be discussed and analyzed by the trial Court. Thus, the trial Court is not required to meticulously discuss the evidence while exercising the power under Section 319 of the Code”.

10. Similarly in another case **Guriya @ Tabassum Tauquir vs. State of Bihar; AIR, 2008 SC 95** the Hon'ble Apex Court had an occasion to analyze Section 319 of the Code in which following observation was made:

“Power under Section 319 of the Code can be exercised by the Court *suo moto* or on an application by someone including accused already before it, if it is satisfied that any person other than accused has committed an offence and he is to be tried together with the accused. The power is discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputably, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word “evidence” in Section 319 contemplates evidence

of witnesses given in Court. Under sub-section (4)(1)(b) of the aforesaid provision, it is specifically made clear that it will be presumed that newly added person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced. That would show that by virtue of sub-section 4(1)(b) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned.”

11. To the similar effect is the observation made by Hon'ble Apex Court in the case of **Y. Saraba Reddy v. Puthur Rami Reddy; 2007 (6) JT (SC) 460.**

12. By now it is also well settled that proposition of law that since the provisions of Section 319(4)(a) of the Code envisages a fresh trial for the newly added accused, fresh evidence needs to be recorded, the evidence so recorded has to be discussed and analyzed by the trial Court meticulously while exercising the power under Section 319 of the Code. The judicial process should not be an instrument of oppression or needless harassment in the hands of private complainant. The Hon'ble Apex Court in the case of **Punjab National Bank and others vs. Surendera Prasad Sinha; 1993 Supp.(1) SCC 499.**

13. Now in the light of the aforesaid established principles, it is to be seen whether the impugned order is legally justified or not. A close scrutiny of the FIR as well as statements of PW-4 and PW-6 transpires that Jahid and Dilshad (respondents No.5 and 6) were not arrayed as assailants in the FIR. Neither their names figured in the FIR nor any specific role has been ascribed to them either by PW-4-Umar Mohammad or Shahrukh Khan-PW-6 in their respective statements. So, it can be safely concluded from the contents of FIR as well as the statements of aforesaid Pws that there is no material against them that they participated in the occurrence or caused any injuries to anyone.

14. Now coming to the role of other accused i.e. respondents No.2 to 4, as per the version unfolded by the complainant/petitioner, they are alleged to have given slaps and fist blows to him as well as Sehnaj but when Shahrukh Khan-PW-6 appeared in the witness box, he has not named any of these persons as assailants. Thus, the statement of complainant lacks corroboration from Shahrukh Khan-PW-6 in this regard. They appears to have been dragged in this case being the near and dears of the accused already facing the trial.

15. Apart from it, there is no specific injury appearing in the MLR's of the injured-persons, which are being attributed to respondents No.2 to 4. Otherwise also, as per the testimony of Dr. Sanjay Phogat-PW-5, only an injury was received by the complainant on his right leg whereas Shahrukh Khan-PW-6 sustained injury on his right leg and Sehnaj received simple injuries on her cheek and clavicle. The matter was thoroughly investigated by the police and the aforesaid persons were not found to be involved in the occurrence. They were declared innocent. Moreover, there is no fresh evidence adduced by the prosecution showing the involvement of any of respondents No.2 to 6. Since there is no evidence to *prima-facie* establish the *criminis participus* of any of respondents No.2 to 6, this Court is of the considered view that learned trial Court has rightly and judiciously exercised its discretion while dealing with an application under Section 319 of the Code.

16. As an upshot of the afore-said discussions, this Court does not find any merit in the instant petition. As such, it stands dismissed.

NOVEMBER 07, 2016
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(JASPAL SINGH)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>