

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

**CRM No.M-19345 of 2016 (O&M)
Date of Decision: November 17, 2017**

Pawan

...Petitioner

VERSUS

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Mukesh Yadav, Advocate
for the petitioner.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

INDERJIT SINGH, J.

Petitioner has filed this petition under Section 482 Cr.P.C. against respondent State of Haryana for quashing the impugned order dated 17.04.2015 passed by learned Judicial Magistrate Ist Class, Mahendergarh, vide which the application under Section 319 Cr.P.C. filed by the complainant/prosecution was allowed and the petitioner was summoned as additional accused and also for quashing the judgment dated 03.05.2016 passed by learned Sessions Judge, Narnaul, vide which the revision petition filed by the petitioner was dismissed.

Notice of motion was issued. Learned State counsel appeared and contested the petition.

I have heard learned counsel for the petitioner as well as

learned State counsel and have gone through the record.

From the record, I find that challan was presented against Dharambir, Kailash and Gheesa Ram in case FIR No.72 dated 17.03.2014 under Sections 148, 149, 323, 325 and 341 IPC by police of Police Station Kanina. During the trial, an application under Section 319 Cr.P.C. was filed by the complainant Rajvir Singh for summoning present petitioner and so many other persons as additional accused for restraining and causing injuries to the complainant party. It is stated in the application that names of all the above assailants have been mentioned by the complainant in his statement but the police in collusion with accused persons, has only challaned Dharambir, Kailash and Gheesa Ram.

Learned JMIC, Mohindergarh, allowed the application under Section 319 Cr.P.C. and summoned present petitioner Pawan along with other accused vide impugned order dated 17.04.2015. A revision was filed against the order dated 17.04.2015 and learned Sessions Judge, Narnaul, dismissed the revision petition qua present petitioner Pawan and one Banta @ Manjit and accepted the revision petition qua other accused.

Aggrieved from the above-said order and judgment, present petition has been filed by petitioner Pawan.

From the record, I find that the complainant has named so many persons who have taken active participation in the commission of the offence. At the time of arguments, it has been brought to the notice of this Court that only four injuries are stated to have been caused to the complainant. As per complainant version, 27 persons armed with dandas, lathis and jaileys had opened attack upon him. Learned Sessions Judge,

the attack will be by 27 persons with deadly weapons then it is not expected that only four simple injuries will be received by the complainant Rajbir. The incident took place at 7.00 p.m. on 16.03.2014 and the FIR was got registered at 2.30 a.m. on 17.03.2014. Learned Sessions Judge, Narnaul also held that the complainant has named large number of persons and it is not possible that so many persons by name would be remembered by Rajbir, upon whom the attack was launched all of a sudden.

For four simple injuries, three persons have already been challenged. Even as per the statement of the complainant Rajbir before the Court under Section 161 Cr.P.C., the role attributed to Pawan is that he said 'they have come' which means that only *lalkara* and no injury is attributed to him. No active participation is there.

Keeping in view the above facts, I find that it does not appear to the Court that present petitioner is also involved in the commission of the offence. Learned Magistrate has not discussed anything while summoning the accused under Section 319 Cr.P.C. The order of learned trial Court looks like non-speaking. Nowhere, learned Magistrate has discussed the facts of the case nor averments of the application. Learned Sessions Judge, Narnaul, though, has taken note of the fact that 27 persons with deadly weapons will not cause four simple injuries to the complainant. There is delay also in registering the FIR. Further, it is also not probable that a person would remember names of 27 persons who attacked all of a sudden upon him and it is also not possible for him to see each and every person, who had attacked him in such a big crowd.

In view of the above discussion, I find that the impugned order

present petitioner and judgment dated 03.05.2016 passed by learned Sessions Judge, Narnaul, dismissing the revision petition qua petitioner, are not as per evidence and law and the same are set aside. The application under Section 319 Cr.P.C. filed by the complainant/prosecution qua petitioner stands dismissed.

Finding merit in the present petition, the same is allowed accordingly.

November 17, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No