

230.

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

CRM-M-32541-2016

Date of decision:17.08.2017.

HANS RAJ

... Petitioner

versus

STATE OF HARYANA & ORS

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Anuj Balian, Advocate,
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

Mr. Ankush Sharma, Advocate,
for respondents No.2 to 4.

HARI PAL VERMA, J.

Petitioner-Hans Raj has filed the present petition under Section 482 Cr.P.C. for quashing of order dated 01.08.2016 passed by learned Additional Sessions Judge, Panchkula, whereby the revision petition filed by the accused (respondents No.2 to 4 herein) against the order of summoning dated 07.04.2016 passed by learned Judicial Magistrate Ist Class, Panchkula, was allowed and the summoning order dated 07.04.2016 passed by learned Magistrate was set aside.

Briefly stated, an FIR No.138 dated 25.10.2013 under Sections 323, 325, 34 IPC, Police Station Raipur Rani, was registered at the instance of complainant Kamla Devi that she is a resident of

Village Chhota Trilokpur. Along with her house, there is a vacant

plot of approximately 4 marlas, which is owned by her and regarding that very plot, a litigation with one Ram Kumar son of Prabhu Ram of same village is pending. On 09.10.2013, said Ram Kumar came near the house of the complainant and asked her to untie their buffaloes which were tied in the middle of the plot. On her (complainant's) reply, the accused scrambled with her and gave a lathi blow on her arm. When suddenly her husband, namely, Layak Ram came there, he was also hit with something on his head. The police was informed at 100 number. The police conducted investigation in the case and found the respondents No.2 to 4 innocent. They were kept in column No.2 of report under Section 173 Cr.P.C.

However, during trial, an application under Section 319 Cr.P.C. was filed by the Public Prosecutor stating therein there that the accused persons in collusion with Ishu, Ankit and Lovely @ Vikas have beaten up the complainant and her husband Layak Ram. On the said application, the trial Court, vide order dated 07.04.2016, summoned the accused for offence under Sections 323, 325 IPC.

Aggrieved against the order dated 07.04.2016 passed by the trial Court summoning the accused, the additional accused i.e. Ishu, Ankit and Lovely @ Vikas filed a revision petition, which was accepted by the learned Additional Sessions Judge, Panchkula, vide judgment dated 01.08.2016, observing therein that the provisions of Section 319 Cr.P.C. are not supposed to be invoked on the whims of the prosecution or the complainant. Once the additional accused sought

to be summoned were found innocent by the police during the course of investigation, then the provisions of Section 319 Cr.P.C. are required to be invoked sparingly.

Learned counsel for the petitioner has argued that the complainant-Kamla Devi was injured in the case and got fracture in the right arm. The accused have been summoned in the FIR though injury has been attributed to Ram Kumar. The presence of accused is, therefore, not disputed. During course of investigation, statements of witnesses were recorded and the complainant-Kamla Devi, Layak Ram (husband of the complainant) and Hans Raj (son of the complainant and petitioner herein), all the witnesses have specifically named the respondents (sought to be summoned as additional accused). While appearing as prosecution witnesses i.e. Hans Raj as PW3, Layak Ram as PW4 have specifically named the respondents and their respective attribution in the offence. It is on the basis of their evidence that application under Section 319 Cr.P.C. for summoning the accused to face trial was moved by the Public Prosecutor. Learned trial Court has rightly summoned the accused, but the learned Additional Sessions Judge has set aside the order without any justifiable reason.

Learned State counsel has pointed out that the police has conducted investigation and found the accused innocent. In the FIR, there is no attribution against the accused and the only attribution is against Ram Kumar. The trial Court has already convicted the accused who caused injury i.e. Dharam Chand, Jeet Ram and Ram Kumar.

I have heard learned counsel for the parties.

This Court in the case of **Hukam Chand and another** **Versus State of Haryana & another-2007(3) RCR (Criminal) 141** has observed that when an accused is found innocent by the police and his name has been kept in column no.2, mere statement of the complainant, which is only reiteration of allegation made in the FIR, cannot be considered as additional evidence and, therefore, the Court cannot summon him solely on such statement, particularly when such statement has already been considered by the police. In order to summon a person under Section 319 Cr.P.C., there has to be some evidence before the Court which would indicate the complicity of the persons who are sought to be summoned. Mere statement of the complainant *ipso facto* cannot form the basis for summoning a person under Section 319 Cr.P.C. Further, reference may also be made to judgment of Hon'ble the Apex Court in the case of **Hardeep Singh** **Versus State of Punjab-AIR 2009 SC 483**, wherein it has been held that the power under Section 319 Cr.P.C. has to be exercised only if the Court is satisfied that the accused so summoned is in all likelihood would be convicted. Thus, when the facts of the present case are analyzed in view of judgment of Apex Court in **Hardeep Singh** (*supra*), it is found that the complainant has clearly failed to make out a case for summoning under Section 319 Cr.P.C.

Summoning of an accused should not be made in casual or mechanical manner. The prosecution must establish some prima facie

case for summoning. Thus, summoning more particularly under Section 319 Cr.P.C. should be ordered sparingly.

The Hon'ble Supreme Court in the case in **Pepsi Foods Limited and another Versus Special Judicial Magistrate and others-(1998) 5 Supreme Court Cases 749** has held as under:-

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

In the present case, no role has been attributed to the accused-respondents No.2 to 4 who are sought to be summoned by way of application under Section 319 Cr.P.C. The only injury caused is on the person of Kamla Devi and which has specifically been attributed to

additional accused would led to a situation i.e. limited injury with unlimited accused, which is legally not permissible.

In view of above, this Court does not find any illegality in the order passed by learned Additional Sessions Judge.

Accordingly, the present petition is dismissed.

(HARI PAL VERMA)
JUDGE

17.08.2017
sanjeev

Whether speaking/reasoned
Whether Reportable:

Yes/No.
Yes/No.