

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

**CRM No.M-35646 of 2016 (O&M)
Decided on: 31.08.2017**

Bharat SinghPetitioner
Versus
Roshan Lal and othersRespondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Dr. Anand Kumar Bishnoi, Advocate for the petitioner.

Mr. Himanshu Rao, Advocate for respondent No.1.

Mr. Arun Kumar, AAG, Haryana for respondent No.2.

ARVIND SINGH SANGWAN, J. (Oral)

The present petition has been filed challenging the order dated 14.09.2016 (Annexure P1) passed by the Lower Revisional Court vide which the order dated 02.12.2015 passed by the trial Court, in FIR No.166 dated 03.05.2012, for offence punishable under Sections 323, 324, 506 read with Section 34 of the Indian Penal Code, 1860 (in short 'IPC') registered in Police Station Dharuhera, District Rewari, dismissing the application under Section 319 of the Code of Criminal Procedure (in short 'Cr.P.C.') was set-aside and the petitioner – Bharat Singh was ordered to be summoned as additional accused under Section 319 Cr.P.C.

Counsel for the petitioner submits that though the petitioner was named in the FIR, however the petitioner as well as one of the co-accused namely Sher Singh were found to be innocent during the investigation and they were kept in Column No.2. Thereafter, when the statement of PW1 – Roshan Lal was recorded, the prosecution filed an application under Section 319 Cr.P.C. for summoning the petitioner

– Bharat Singh as well as Sher Singh as additional accused. The trial Court vide its order dated 02.12.2015, dismissed the application under Section 319 Cr.P.C. by observing that prima facie to the satisfaction of the Court, no fresh evidence has come on record to summon Bharat Singh and Sher Singh as additional accused. The respondent/complainant filed a revision before the Lower Appellate Court which was partly allowed vide impugned order dated 14.09.2016 and while dismissing the prayer qua co-accused – Sher Singh, the petitioner – Bharat Singh was ordered to be summoned as an additional accused. Counsel for the petitioner has further submitted that as per the statement of PW1 – Roshan Lal, there is discrepancy with regard to the weapon used by him as at one stage, he has stated that he has caused a stick blow on the thumb of the complainant and then, he stated that petitioner – Bharat Singh has given an axe blow on head of his wife.

On the other hand, counsel for the State assisted by counsel for respondent No.1/complainant has submitted that the order passed by the trial Court was not based on proper appreciation of evidence, which has come on record during the investigation as well as in the statement of PW1 – Roshan Lal. It is further submitted that in grounds of revision, the complainant has specifically stated that apart from the statement of PW1 – Roshan Lal, who has deposed before the trial Court that it was Bharat Singh who was armed with an axe at the time of occurrence and he gave a blow on the head of his wife and on the thumb of the complainant. There is a statement of injured – Poonam as well as the injured – Ratni Devi under Section 161 Cr.P.C. in which they have named Bharat Singh as an accused who has caused injuries.

Counsel for the State has also referred to the MLR of Ratni Devi wife of Roshan Lal and as per the MLR, the injuries found on the head of the injured – Ratni Devi, co-relates to the injuries attributed to the petitioner – Bharat Singh. It is also submitted that while passing the impugned order, the Lower Appellate Court after affording an opportunity of hearing to the petitioner and on appreciation of evidence which has come on record has rightly summoned the petitioner under Section 319 Cr.P.C.

Counsel for the respondent/complainant has also referred to the judgment **“Hardeep Singh vs State of Punjab”, 2014(1) RCR (Criminal) 623** to support his contention that the powers under Section 319 Cr.P.C. can be exercised at any stage. The Lower Appellate Court while summoning the petitioner has made the following observations:-

“The learned Public Prosecutor whiel going through the police file submitted that during the investigation, the investigating officer has taken affidavits of certain villagers in which they alleged that Bharat Singh and Sher Singh were not present at the time of this occurrence but those affidavits were not made part of the judicial record. So far as the other defence of the respondents, is concerned although it is alleged that Daya Ram has also lodged a DDR in which he alleged that actually it was the complainant party of this case, who assaulted them and that statement of Daya Ram is also part of the police file as conceded by the learned Public Prosecutor but he further stated that after considering the stand of respondent Daya Ram, the investigating officer failed that no cognizance offence is made out which obvious of the respondent that it was the complain party in this case which initiated the assault and caused injuries to

them and they simply used their right of private defence is a misconceived plea which cannot be considered at this stage for any purpose whatsoever. Then admittedly the respondents have no private complaint with the Area Magistrate to seeks prosecution of the petitioner – complainant and his family for that cross-version. In these facts and circumstances, it is apparent that so far as the involvement of Bharat Singh son of Sher Singh in the occurrence is concerned, there is nothing to justify that how the investigating officer found that he was not present at the time of this occurrence especially when it is admitted that during the occurrence, Bharat Singh was present in the house as in the cross-version, it was alleged that the complainant party of this case assaulted Daya Ram, etc. and they entered into the house of Bharat Singh.”

In view of the fact that the petitioner himself has set up a cross-version and has not disputed his presence at the spot and also in view of the fact that statement of PW1 – Roshan Lal, corroborated with medical evidence, I do not find any merit in the impugned order dated 14.09.2016 passed by the Lower Revisional Court, summoning the petitioner under Section 319 Cr.P.C. as as additional accused.

Dismissed. However, the observations made in this petition is only for the purpose of deciding the application under Section 319 Cr.P.C. and will not have any bearing on merits of the case.

31.08.2017
yakub

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No