

In the High Court of Punjab and Haryana at Chandigarh

.....

Criminal Misc. No.36794 of 2015 and
Criminal Misc. No.6887 of 2016 and
Criminal Misc. No.M-35002 of 2015 (O&M)

.....

Date of decision:18.1.2017

Meena and others

.....Petitioners

v.

State of Haryana and another

.....Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

.....

Present: Mr. Amit Rana, Advocate for the petitioners.

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

Mr. Mohit, applicant in person and for respondent No.2.

.....

Inderjit Singh, J.

Criminal Misc. No.36794 of 2015:

For the reasons mentioned in the application, the same is
allowed and applicant-Mohit is impleaded as respondent No.3 in this case.
He is also granted exemption from filing typed copies of Annexures.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.6887 of 2016:

For the reasons mentioned in the application, applicant-Mohit
(respondent No.3) is granted permission to appear and argue the matter in
person for self and on behalf of respondent No.2.

The criminal miscellaneous application stands disposed of.

Cr. Misc. No.M-35002 of 2015 (O&M):

This petition has been filed under Section 482 Cr.P.C. read with Section 483 Cr.P.C. seeking setting aside of the order dated 17.1.2015 (Annexure-P.11) passed by the learned Additional Chief Judicial Magistrate, Fatehabad, whereby the petitioners stand summoned under Section 319 Cr.P.C. as additional accused to face trial along with the accused already facing trial and the order dated 17.8.2015 (Annexure-P.12) passed by revisional Court i.e. learned Additional Sessions Judge, Fatehabad, upholding the same in case FIR No.412 dated 26.7.2013 registered for the offences under Sections 323, 325, 506 read with Section 34 IPC at Police Station City Fatehabad, District Fatehabad in the interest of justice.

I have heard learned counsel for the petitioners, respondent No.2 and learned State counsel and have gone through the record.

From the record, I find that the challan has been presented against two accused Ankit and Ravi Bhadu in FIR No.412 dated 26.7.2013 under Sections 323, 325, 506 read with Section 34 IPC registered at Police Station City Fatehabad, District Fatehabad. During the trial, an application had been filed under Section 319 Cr.P.C. by the APP to summon Shree Niwas, Santosh, Suraj Bhadu and also wife of Ram Niwas, namely, Meena as additional accused.

The learned Additional Chief Judicial Magistrate, Fatehabad, vide order dated 17.1.2015 summoned all these additional accused. Aggrieved from this order a revision petition was filed before the Court of

Session by Shree Niwas, Santosh and Meena, which was also dismissed. Aggrieved from these orders, the present petition has been filed by the petitioners Meena, Santosh, Shree Niwas and Suraj.

A perusal of the record shows that as per the prosecution version as given in the FIR, Pavittar-complainant stated that on 22.7.2013 at about 9.00 p.m., he, his mother Sumitra Rani, his brother Mohit and his driver Manoj were coming from Chandigarh to Model Town and in front of their house Shree Niwas, Santosh, Ankit, wife of Ram Niwas, namely, Meena, Ravi, Suraj and 4-5 other persons were present. Shree Niwas Bhadu raised 'Lalkara' and directed Santosh and other persons and stated that let Pavittar be killed. Thereafter, Santosh and Meena caught hold of complainant's mother, Santosh gave leg blows in the abdomen of complainant's mother and Meena nipped her hair. Other 4-5 persons caught hold of Mohit and Manoj by pointing knife. Thereafter, Shree Niwas said that Pavittar be finished and Shree Niwas slapped him. Ankit Bhadu also stated that let he be killed. Then Ankit, Ravi and Suraj, who were armed with cycle chain, brick and iron rod, attacked him. Then Ankit and Ravi caught hold of his hand and Suraj Bhadu attacked him with buttoned knife on his neck and while attempt to save himself, a knife touched his hand. Thereafter, Ankit and Ravi gave iron rod blow toward his face, which caused injury on his nose and blood oozed out. Then Ankit gave punch blow on his chest and abdomen. Ravi gave brick blow behind his neck due to which he fell down. They dragged him from his leg. Ankit caught hold of his leg, Ravi and Ankit started strangulating his neck. Mohit tried to

rescue himself from their clutches, then Ravi Bhadu on the signal of Suraj Bhadu gave knife blow on his forehead. Mohit called upon the Police on telephone, but nobody came at the spot. The petitioners had given the description of the injuries in the petition itself. As per the MLR, the complainant received the following injuries:-

- “(1) C/o pain and tenderness over nose with nasal bleeding. Adv. X-ray nasal bone, KUO.
- (2) C/o pain & tenderness behind left ear without external injuries seen.
- (3) C/o generalized pain over (left) chest lateral aspect without any external injury seen simple blunt.
- (4) C/o generalized pain over whole abdomen without any external injury seen. Simple blunt.”

As per the ENT report, the doctor opined injury No.1 on the nose as fracture and found no bone injury at injury No.2.

A perusal of the above injuries shows that injury No.1 was only complaint of pain and tenderness over nose with nasal bleeding without any external injuries, which means that only one injury was seen on the nose which falls under Section 325 IPC. The remaining three injuries are only complaint of pain and are no injuries in the medical jurisprudence. Complaint of pain is no injury as per medical jurisprudence. Two persons had been challaned by the Police and these petitioners have been found innocent during investigation.

Further more, the occurrence took place on 22.7.2013 at about

9.00 p.m. and the FIR was registered on 26.7.2013 at 16.25 O'clock. It is argued that the DDR was got registered on 23.7.2013 at 11.13 a.m., even then there was a delay of 14 hours in recording the FIR.

Keeping in view the evidence on record and the medical evidence, it does not appear to the Court that these additional accused are also involved in the commission of the offences. Mere mentioning of the names of the accused and attributing injuries in the FIR as well as in the Court will not itself prove that these injuries were given by the accused. These statements are not supported and corroborated by medical evidence. The standard of proof for summoning of the accused is somewhat more than *prima facie* case.

From the record, I find that it does not appear from the evidence that these petitioners are involved in the commission of the offences, therefore, finding merit in the petition, the same is accepted. The order dated 17.1.2015 (Annexure-P.11) passed by learned Additional Chief Judicial Magistrate, Fatehabad and the order dated 17.8.2015 (Annexure-P.12) passed by learned Additional Sessions Judge-I, Fatehabad, are set aside.

January 18, 2017.

(Inderjit Singh)
Judge

hsp

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