

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

CRM-M-36549 of 2017.
Decided on:-28.09.2017.

Laxmi.

.....Petitioner.

Versus

State of Haryana and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Chanderhas Yadav, Advocate
for the petitioner.

HARI PAL VERMA, J.

The petitioner has filed this petition under Section 482 Cr.P.C. seeking setting aside of order dated 19.09.2016 passed by learned Judicial Magistrate 1st Class, Charkhi Dadri, whereby the application under Section 319 Cr.PC filed by the petitioner-complainant for summoning of respondent No.2 as an additional accused, was dismissed.

Challenge has also been laid to order dated 05.09.2017 passed by learned Additional Sessions Judge, Charkhi Dadri vide which the order dated 19.09.2016 passed by learned Magistrate was upheld and the revision petition filed by the petitioner-complainant was dismissed.

Briefly stated, on the statement of the petitioner-complainant, FIR No.67 dated 11.04.2014 under Sections 323, 325 and 506 read with Section 34 IPC was registered at Police Station Baund Kalan, District Bhiwani on the ground that on 09.04.2014 at about 05.30 P.M., the

complainant had gone to her plot to bring woods. Accused Neelam wife of Sandeep was also present in the plot. The plot is in joint holding of her husband and two brothers, namely, Lal Singh and Dharambir. The complainant asked Neelam to remove the woods lying in the passage. But Neelam caught hold of the complainant from her hair (Choti) and threw her on the ground. She started giving fist and kick blows to the complainant. Thereafter, the complainant had gone to her house and a meeting of family members was convened, where respondent No.2 Sandeep and his wife Neelam had apologized in presence of the family members of the complainant.

Again on 10.04.2014, when the complainant along with her elder son Hanuman was doing the cleaning work in front of their house, in the meantime, respondent No.2 Sandeep and his wife Neelam were passing through and the complainant asked Neelam to arrange the woods lying in her plot. On this, Sandeep and his wife Neelam had gone to their house and brought bamboo sticks. After coming out, Sandeep had given a blow which hit the complainant on her head on the upper side of left ear. Then Neelam had also given a Danda blow on her waist and left shoulder.

On the next day i.e. 11.04.2014 at about 08.00 A.M., when the complainant was coming out of her house to use the bathroom, respondent No.2 Sandeep shouted upon her with bad names and hit her with a brick bat lying in the street, which hit on the little finger of her right hand. She raised a hue and cry and on hearing this, her husband Dhan Singh came at the spot. However, when her husband tried to save the complainant, accused Tarawati wife of Lal Singh and Satender @ Sonu son of Lal Singh also came there,

who were carrying Dandas in their hands. They all had given injuries to the husband of the complainant. Accused Sandeep and his wife Neelam have repeatedly given threats to the complainant and her husband.

In the said FIR, the police has conducted investigation and found respondent No.2 Sandeep innocent and did not challan him.

During the trial, the complainant moved an application under Section 319 Cr.PC for summoning of respondent No.2 as an additional accused.

Vide order dated 19.09.2016 passed by the trial Court, the application filed by the petitioner-complainant was dismissed.

The said order dated 19.09.2016 was challenged by the petitioner-complainant by filing a revision petition before the Court of Session. However, the said revision petition was dismissed by learned Additional Sessions Judge, Charkhi Dadri vide order dated 05.09.2017.

It is in these circumstances, the present petition has been preferred by the petitioner-complainant.

Learned counsel for the petitioner-complainant has argued that the Courts below have failed to take into consideration the fact that the petitioner had clearly named the respondent No.2 at the very initial stage in the FIR itself. The injury was specifically attributed to respondent No.2 by stating that he had crushed the little finger of the right hand of the petitioner with a brick bat. The said injury found place in the MLR also, but the exoneration of respondent No.2 by the investigating agency was highly illegal and uncalled for. He has prayed for setting aside of the impugned orders passed by the Courts below and for summoning of respondent No.2 in the

case.

I have heard learned counsel for the petitioner.

No doubt, Section 319 Cr.PC provides that where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused, has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

However, at the same time, no person on an application under Section 319 Cr.PC can be summoned as an additional accused merely on the basis of statement of the complainant recorded in the Court unless there is material to summon. In order to summon an accused, some “fresh evidence” must have come on record so as to impel the Court to summon such person as an additional accused.

Record reveals that vide impugned order dated 19.09.2016, the trial Court had come to the conclusion that the statement of the complainant and version of the FIR has already been considered by the investigating agency and the same had been found to be unreliable as regards commission of the offence by the proposed accused. There are four injuries on the person of the complainant. As many as three accused are already facing trial. The person sought to be summoned i.e. respondent No.2 Sandeep is family member of the other accused who are already facing trial. Further, respondent No.2 is a Government servant and it has become a tendency to drag innocent persons who were otherwise serving in Government jobs.

Perusal of the impugned order dated 05.09.2017 passed by the revisionary Court reveals that the Court has observed that the occurrence

between the parties is spread over on three different dates i.e. 09.04.2014, 10.04.2014 and 11.04.2014. Respondent No.2 Sandeep has been attributed two injuries, one on 10.04.2014 and the second on 11.04.2014. The complainant had given different versions in her statement Ex.PW2/A and when she appeared in the Court as PW2. In her statement Ex.PW2/A, she has stated that the respondent No.2 had given a blow on her head above the ear, whereas his wife Neelam had given a Danda blow on her shoulder. Further, in here statement Ex.PW2/A, she has stated on 11.04.2014, respondent No.2 Sandeep had given a brick blow on her little finger, but at the time when she appeared in the witness box as PW2, she has stated that on 11.04.2014, Sandeep had given a brick blow on the little finger of her right hand, but this fact she has not deposed that respondent No.2 Sandeep had given any blow on her head above the ear. Thus, the very reliability of the statements of the complainant was doubted.

Hon'ble Supreme Court 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 ***Hardeep Singh Versus State of Punjab (2014) 3 SCC 92***, it has been held by the Apex Court that the degree of satisfaction for invoking Section 319 Cr.P.C. should be of more than a prima-facie case, as exercised at the time of framing of charge, but short of satisfaction to an extent that evidence, if not rebutted, may lead to conviction of the person sought to be added as accused.

Therefore, having applied the judgments of Hon’ble Supreme Court in ***Pepsi Foods Limited and another’s case (supra)*** and ***Hardeep Singh’s case (supra)*** and noticing the fact that there being a total contradiction in the statements of the petitioner-complainant, this Court finds that no interference is warranted.

Accordingly, the impugned orders passed by learned Courts below are affirmed and the present petition, being devoid of any merit, is dismissed.

(HARI PAL VERMA)
JUDGE

September 28, 2017
Yag Dutt

Whether speaking/reasoned: Yes

Whether Reportable: No