

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

CRM-M-39109-2016 (O&M)

Date of decision-27.01.2017

Vidya Nand

...Petitioner

Vs.

Devender and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. J.P.Sharma, Advocate for the applicant-petitioner(s).

JITENDRA CHAUHAN, J. (Oral)

CRM-2293-2017

Application is allowed as prayed for.

Annexures P-4 and P-5 are taken on record subject to all just exceptions.

CRM-M-39109-2016

This petition under Section 482 of the Criminal Procedure Code has been filed for setting aside the impugned order dated 25.04.2016 (Annexure P-1) passed by SDJM Mohindergarh and impugned judgment dated 09.08.2016 (Annexure P-2) passed by Sessions Judge Narnaul whereby respondent No.1, Devender son of Sh. Surender has not been summoned under Section 319 despite having been an active participation in the offence in FIR No.294 dated 22.07.2013 registered under Sections 323, 325 and 506 of Indian Penal Code read with Section 34 of Indian Penal Code at Police Station Mohindergarh.

Learned counsel for the petitioner contends that respondent No.1 is the main accused who inflicted injury on the head of the

petitioner/complainant. He further states that his name duly figures in the FIR and the injury attributed to him is corroborated from the MLR of the petitioner (Annexure P-4). As per the FIR, the injury is an axe injury. However, learned counsel fairly concedes that whether the injury was caused from the reverse side or from the sharp edged side is not reflected in the FIR.

I have heard learned counsel for the petitioner and have gone through the case file.

Notice of motion.

At the asking of the Court, Mr. Saurabh Mohunta, DAG, Haryana accepts notice on behalf of the respondent-State. A complete copy of the paper book has been furnished to the learned counsel, in the Court.

It is to be seen that as per the case of the petitioner, respondent No.1 had caused head injury to the petitioner which is reflected in Annexure P-4 subsequently brought on record. However, there is no recital of the fact as to how the said injury was caused. The matter was examined four times by the Investigating Agency including the concerned Deputy Superintendent of Police, wherein presence of the accused/respondent on the spot was not established. Moreover, the alleged weapon has not been recovered. An application moved by the petitioner for summoning was considered by learned SDJM Mohindergarh vide order dated 25.04.2016 and the plea of summoning was dismissed. The order passed by the SDJM was assailed before the Court of Sessions Judge, Narnaul by passing a detailed order reflecting the reasons for not summoning the respondent No.1.

The controversy regarding summoning under Section 319

Cr.P.C. has been settled by Hon'ble the Apex Court in **(2014) 3 SCC 92, *Hardeep Singh Vs. State of Punjab and others***". Their Lordships have held as under:-

"Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for ? framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different."

In view of the above and considering that the matter was examined four times by the Investigating Agency and that the FIR lacks in specificity as to how the injury was inflicted, this Court feels that no case for interference in the order passed by the Courts below is made out.

Consequently, the petition stands dismissed.

(JITENDRA CHAUHAN)
JUDGE

January 27, 2017

vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No