

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

**CRM No.M-3885 of 2017 (O&M)
Date of Decision: 08.02.2017**

Pardeep Kumar Sharma	Versus	... Petitioner
State of Haryana & others		... Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Rahul Vats, Advocate for the petitioner.

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TEJINDER SINGH DHINDSA, J.

An application moved by the prosecution under Section 319 Cr.P.C. for summoning the private respondents No.2 to 9 herein as additional accused to face trial in case FIR No.363, dated 02.10.2009, under Sections 323/325/342/365 read with Section 506 IPC, at Police Station Mahendergarh was allowed by the Judicial Magistrate 1st Class, Narnaul vide order dated 01.12.2015 (Annexure P-5). A revision petition having been preferred, vide order dated 17.12.2016 (Annexure P-6) passed by the learned Additional Sessions Judge, Narnaul, the same has been accepted and the order of the trial Court summoning the private respondents as additional accused has been set aside.

Learned counsel appearing for the petitioner has raised one solitary submission. It is contended that a well reasoned order passed by the trial Court has been set aside in the light of the impugned order by terming the same as a review of a previous order declining an application under Section 319 Cr.P.C. and such view cannot sustain as there is no bar contemplated under Section 319 Cr.P.C. as regards filing of a second application. In furtherance of such contention, it has been argued that the second application filed by the prosecution under Section 319 Cr.P.C. was

on the strength of the deposition recorded before the trial Court of PW6, namely, Umakant. Counsel submits that at the stage of adjudication of the first application filed under Section 319 Cr.P.C., PW6 had not been examined before the trial Court and as such, it was not open for the revisional Court to have set aside the order of the trial Court to summon the private respondents as an additional accused by terming the same as a review of the previous order.

Having heard counsel for the petitioner at length and having perused the pleadings on record, I am of the considered view that the present petition lacks merit.

Brief facts that would emanate from the pleadings on record are that the complainant Pardeep Kumar Sharma had alleged that on 19.09.2009 at about 4 P.M., he had been dragged into a moving vehicle and had been assaulted by a number of persons. Complainant in his initial statement had named Rajinder, Basant Lal and Ravinder to be part of the accused party. After completion of investigation, the final challan was presented in which only Umesh was nominated as an accused to face trial. Prosecution in the first instance filed an application under Section 319 Cr.P.C. to summon the private respondents as additional accused and the same was dismissed by the trial Court vide order dated 05.11.2014 (Annexure P-3). Even a revision petition preferred was declined by the revisional Court vide order dated 30.09.2015 (Annexure P-4). Apparently, after recording the deposition of PW6 Umakant, a second application under Section 319 Cr.P.C. was filed and which was allowed vide order dated 01.12.2015 by the Judicial Magistrate 1st Class, Narnaul (Annexure P-5). The revision petition filed against such order has been accepted in the light of the impugned order

dated 17.12.2016 (Annexure P-6) and which in turn has led to the filing of the present petition.

This Court finds that the contention raised by the counsel that the second application filed under Section 319 Cr.P.C. had been allowed on strength of the deposition/evidence adduced before the trial Court in the light of the statement of PW6 alone is misconceived. Perusal of the order dated 01.12.2015 passed by the Judicial Magistrate 1st Class, Narnaul and whereby the application filed under Section 319 Cr.P.C. had been allowed and the reasoning furnished therein is in the following terms:

“Against this self speaking legal backdrop, once again joining the mainstream of the present case, during their in-dock testimonies, the applicant/injured Pardeep Sharma as well as the projected eye witness Umakant examined as PW5 and PW6 respectively have strenuously testified to the effect that apart from the accused facing the trial, they sought to be impleaded accused Rajinder, Basant Lal, Shiv Dutt, Ravinder, Anup, Dharampal and Ranvir in prosecution of their common object belabored the de facto complainant Pardeep Kkumar in the area of old Court Mahendergarh and also made an attempt to abduct by bundling him into a Bolero Car and had also administered the criminal intimidation with the fatal consequences of death. Additionally, the case of the applicant/de facto complainant vis a vis the complicity of they sought to be summoned accused is fortified by the original tehrir of the de facto complainant Pardeep depicting the initial edition of the occurrence, by the FIR Ex.PW4/A, the DDR Ex.PW4/B and his statement as well as by the statement of Umakant recorded by the police under Section 161 Cr.P.C. dovetailing with each other apropos the complicity of the proposed accused to the aforesaid effect. Apart from the above, the case of the applicant for summoning the accused to stand trial with the present accused gets additional strength by the

MLR of the complainant Pardeep Kumar Ex.PW3/B of the same date i.e. of 19.09.2009 depicting twelve bodily injuries on the person of the complainant caused by the blunt weapon within the probable duration of 12 hours.”

The extract reproduced herein above would make it clear that it is not only the deposition of PW6 Umakant that has weighed with the trial Court but also the other material that had already been adduced and was part of the record at the stage when the first application filed under Section 319 Cr.P.C. had been declined. In such a situation and factual matrix, no infirmity can be found in the view taken by the revisional Court while passing the impugned order dated 17.12.2016 and by holding that the trial Court had virtually reviewed its previous order dated 05.11.2014 while declining an application filed under Section 319 Cr.P.C.

No basis for interference is made out.

Petition is dismissed.

08.02.2017

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | No |