

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

**CRM-M-40841 of 2016
Date of decision : 11.7.2017**

Sombir

.....**Petitioner**

v.

State of Haryana

.....**Respondent**

CORAM: HON'BLE MR. JUSTICE (DR.) SHEKHER DHAWAN

Present: Mr. J.S. Mehndirtta, Advocate, for the petitioner

Mr. Satish Saini, DAG, Haryana

SHEKHER DHAWAN, J.

1. Present petition under Section 482 Cr.P.C. is for quashing of order dated 5.10.2016 (Annexure P-9) passed by the learned Additional Sessions Judge, Bhiwani, whereby revision preferred by the petitioner against order dated 3.11.2015 was dismissed.

2. Learned counsel for the petitioner while assailing the order dated 5.10.2016, mainly took the plea that there was absolutely no material evidence before the Court so as to proceed against the present petitioner by invoking the power under Section 319 Cr.P.C. His name was not disclosed in the first version. There was no supplementary statement by the complainant or any of the eye witnesses at any stage. The first version came on 5.4.2014 and till 15.6.2015, there was no disclosure of any allegation against Sombir (Sombir Jakhar). Even PW1 and PW2, examined before the trial Court, have not uttered anything by way of material or legal evidence against the present petitioner.

Learned counsel for the petitioner also raised legal plea that as per

section 195 of Cr.P.C., there was complete bar to take cognizance under Section 319 Cr.P.C. and prayed for setting aside of the order.

3. While arguing, learned State counsel contended that it had come in the statement of PW3-Karamjit Singh that the occurrence had taken place mainly on the asking of the present petitioner and his name was disclosed by Karamjit Singh when he appeared in the Court. Earlier he was not aware about the name of the present petitioner and his name was disclosed to him by the children, who were present at the centre at the time of alleged occurrence. The only opportunity available with Karamjit Singh was to depose before the Court on 15.1.2016 and he availed that opportunity and the Court while relying upon his statement, passed the order and the revision petition was decided by learned Additional Sessions Judge accordingly. Learned State counsel further contended that the present petition is without any merit and the same may be dismissed.

4. Having considered the submissions made by learned counsel for the parties and perusal of record, this Court is of the considered view that there is absolutely no ambiguity on the point that name of the petitioner had never come at the time of first version, which was recorded on 5.4.2014. There was no supplementary statement of complainant or any other eye witness to the alleged occurrence. The order under challenge has been passed on the basis of subsequent evidence by way of statements of PW1 to PW3. Undisputedly, PW1 and PW2 have not uttered even a single word against the present petitioner, who was summoned to face trial as an additional accused under Section 319 Cr.P.C. The only relevant evidence had come by way of statement of PW3 Karamjit Singh, the relevant portion of which extracted here below :-

“Later on we came to know that the person on whose asking we were attacked, his name was Sombir Jakhar R/o Bigobha.”

5. This Court is of the view that the material by way of above statement of PW-3 Karamjit Singh was not sufficient to summon anybody as an additional accused, when the allegations itself were totally vague. There was no mention about the time when the fact regarding involvement of Sombir came to knowledge of PW3- Karamjit Singh. There was no disclosure about the source, who had disclosed the name of Sombir and merely mentioning such a fact against an individual, cannot be made a basis so as to call him and to face trial as an additional accused.

6. Apart from that, there is complete embargo under Section 195 Cr.P.C. for dealing with the offence punishable under Section 186 IPC. Such a view was taken by this Court in the case of **“Rajinder Kumar Chhibbar v. Aseem Bakshi, 2006(3) RCR (Criminal) 586”**.

7. In view of above, the present petition is allowed and the order dated 5.10.2016 (Annexure P-9) being legally not sustainable, is set aside.

(SHEKHER DHAWAN)
JUDGE

11.7.2017
Ashwani

Speaking/reasoned	:	Yes/No
Reportable	:	Yes/No