

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No.1227 of 2012 (O&M)

Date of Decision : 31.05.2017

Sandeep

....Petitioner

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Y.P. Malik, Advocate
for the petitioner.

Mr. Tanuj Sharma, AAG, Haryana

Mr. Vikramjit Singh, Advocate
for Mr. Aman Pal, Advocate
for respondent no. 2.

Surinder Gupta, J.

This is revision petition filed by Sandeep son of Rajbir against order dated 10.02.2012 passed by Additional Sessions Judge, Panipat whereby revision against order dated 05.04.2011 passed by trial Court dismissing application of prosecution for summoning revision petitioner-Sandeep and another accused, namely Pardeep son of Dharambir, was accepted and both were ordered to be summoned to face trial as additional accused.

2. Revision-petitioner was named in the FIR and while appearing as PW-1 complainant-Naresh son of Satbir has testified on oath that revision-petitioner had attacked him with '*binda*' of spade and other accused, namely, Pardeep also attacked him with '*binda*' of spade. The version of complainant-injured was supported by medical evidence. However, they were not challaned and the police found them innocent with the observation that mobile location of Sandeep and Pardeep were traced

out during investigation and it was found that at the time of occurrence they were not at the place of occurrence, rather they were at Ambala.

3. Learned lower revisional Court was satisfied from the evidence on record that there is enough material to infer that the petitioner has committed the offence and could be tried alongwith other accused already facing trial.

4. Learned counsel for the revision-petitioner has argued that trial of the case is already over, as such, order of lower revisional Court has been rendered infructuous. He has further argued that the petitioner has been attributed injury on the back of complainant while no such injury was caused on the person of complainant. This fact is clear from the pictorial diagram of injuries suffered by the complainant.

5. In the FIR as well as while appearing as PW-1, complainant has stated that petitioner-Sandeep had given blow with *binda* of *kassi* on his back. There were seven injuries on the person of complainant out of which two injuries were on the back and two on the back of right shoulder. The testimony of complainant was sufficient to hold that evidence more than to make out a *prima facie* case was available on record to summon petitioner to face trial as additional accused alongwith other accused. The police had not challaned the petitioner and his co-accused by accepting their plea of *alibi*. Here a question, which arises for consideration is, as to whether location of mobile phones is suffice to accept the plea of *alibi*. I am of the opinion that this fact requires consideration during trial coupled with other evidence on record to accept the plea of *alibi* set up by accused. The Court of revision has rightly discarded this plea of petitioner in view of other evidence on record and I find no reason to interfere with order of Court of

revision on this score.

6. Here learned counsel for the revision-petitioner has raised another submission stating that trial of the case is already over, as such, the petitioner cannot be tried with other accused, hence order of lower revisional Court has been rendered infructuous. In support of his contention, he has relied on observation in case of **Harjinder Singh vs. State of Haryana and others, 2013 (1) RCR (Criminal) 1038.**

7. I have carefully gone through the above citation but find that the same is not applicable to facts and circumstances of present case.

8. It is not disputed that order to summon the petitioner as additional accused was passed before conclusion of trial of main case and in the above referred citation it was observed that no person can be summoned as additional accused to face trial after conclusion of trial of main case. As the petitioner had been ordered to be summoned before conclusion of the trial of main case, this plea raised by learned counsel for the petitioner is discarded.

9. As a sequel of my above discussion, this revision-petition has no merit and the same is dismissed.

CRM-31059-2015

10. This is application filed by revision-petitioner to place on record his matriculation certificate.

11. It appears that revision-petitioner wants to place on file matriculation certificate in support of his plea that he was juvenile at the time of occurrence.

12. Instant application is disposed of with liberty to the petitioner to move this application before the trial Court and on filing such

application, trial Court will proceed to decide that application in accordance with law.

13. CRM Nos. 36664-65 of 2015 and any other application on record are dismissed as not pressed.

14. The petitioner is directed to appear before the trial Court on 10.07.2017. The trial Court will take up the file and proceed in the matter in accordance with law.

May 31, 2017
jk

(SURINDER GUPTA)
JUDGE

Whether speaking/Reasoned

Yes/No

Whether Reportable

Yes/No