

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

**CRR No.1466 of 2016 (O&M)
Decided on: 07.09.2017**

Narender @ Niku and others

....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Aman Pal, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. Ajay Ghangas, Advocate
for the complainant.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this petitioner is for setting-aside the order dated 17.03.2016 passed by the Additional Sessions Judge, Jhajjar to face the trial under Sections 148, 323, 324, 325, 326, 307 read with Section 149 of the Indian Penal Code, 1860 (in short 'IPC') by allowing the application filed under Section 319 of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.').

At the very outset, counsel for the petitioners seeks permission to withdraw the present petition qua petitioner No.1 namely Narender @ Niku son of Rajbir.

Heard.

Allowed as prayed for and the petition qua petitioner No.1 is ordered to be dismissed as withdrawn.

Counsel for the petitioners has submitted that as per the

allegations in the FIR, the petitioner No.2 – Babli wife of Satbir was allegedly carrying a lathi and petitioner No.3 – Anita wife of Jaibir was only named as wife of Jaibir and, however, her name was not given in the FIR. Counsel for the petitioners has further submitted that during the course of investigation, the police found all the 03 persons including Narender @ Niku to be innocent. So far, the petitioners No.2 and 3 are concerned it was found, on the basis of the affidavit filed by 06 villagers that they were at home being housewives and they were not found to be present at the place of occurrence i.e. at 09:30 p.m. Later on, while recording the statement of prosecution witnesses, the statement of PW1 – Vijay Kumar was recorded and an application under Section 319 Cr.P.C. was moved praying for summoning all the 03 persons as additional accused. The trial Court vide impugned order dated 17.03.2016 has allowed the application and has summoned all the 03 persons as an additional accused. Counsel for the petitioners has further submitted that while allowing the application under Section 319 Cr.P.C., the trial Court has not taken into consideration that no such evidence has come on record which prima facie proves that the petitioners were involved in commission of the offence. In support thereof, counsel for the petitioners has referred to the statement of PW1 – Vijay Kumar who has stated that petitioner No.2 – Babli wife of Satbir and petitioner No.3 – Anita wife of Jaibir (who was not named in the FIR by her name) were having lathis in their hands and all of them alighted from the tractor and assaulted him. Thus, it is submitted that even on the bare perusal of the statement of PW1, no specific role has been attributed to Babli and Anita. Counsel for the petitioners has

further referred to the MLRs of the injured witnesses to contend that there is no corresponding injuries in the MLR to prove that any injury was caused by the petitioners No.2 and 3 by their respective weapon i.e. Lathi. Counsel for the petitioners has relied upon the judgment of Hon'ble Supreme Court of India "***Hardeep Singh vs State of Punjab and others***" 2014(1) RCR (Criminal) 623 and has submitted that in order to invoke the powers under Section 319 Cr.P.C., it is required that much stronger evidence than mere probability of the complicity of accused should come on record. The evidence which has come on record should be more than *prima facie* case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction.

Accordingly, it is submitted that there are general and vague allegations against the petitioners and the petitioners who was found innocent during the investigation of the police, on the basis of the affidavits submitted by 06 villagers out of 15 independent witnesses has not been considered. It is further submitted that even a perusal of the impugned order would show that the trial Court has only considered the evidence relating to the petitioner i.e. co-accused namely Narender @ Niku only and the impugned order is a non-speaking order qua the role attributed to the petitioners No.2 and 3 namely Babli and Anita.

In reply, counsel for the State has submitted that the petitioners were exonerated of the police investigation and as per the investigation conducted by the police as many as 06 persons out of 15 persons of the village have furnished the affidavits that both the petitioners i.e. Babli and Anita were not present at the spot.

Learned counsel appearing for the complainant has fairly conceded that there is no corresponding injury in the MLR of any of the witness to connect the injuries allegedly caused by petitioners No.2 and 3. However, has opposed the prayer by submitting that it has come in evidence of PW1 that petitioners No.2 and 3 were present at the spot.

After hearing counsel for the parties, I find that the impugned order is not sustainable in the eyes of law as the trial Court has not specifically dealt with the role of the petitioners; the investigation report under Section 173 Cr.P.C. which found the petitioners to be innocent; the statement of PW1 – Vijay Kumar in which for the first time, he has named petitioner No.3 (by name as wife of Jaibir); the role attributed to them that they were carrying lathis and that the allegations that they gave blows to the complainant are general in nature and, therefore, in the light of the judgment *Hardeep Singh's case (supra)*, no *prima facie* evidence has come on record to summon the petitioners No.2 and 3 under Section 319 Cr.P.C. Accordingly, the present revision petition is partly allowed and the impugned order dated 17.09.2016 *qua* petitioners No.2 and 3 is set-aside.

(ARVIND SINGH SANGWAN)
JUDGE

07.09.2017
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No