

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

**CRR No.2812 of 2014 (O&M)
Date of Decision: May 15, 2017**

Vikram

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Navneet Singh, Advocate
for the petitioner.

Mr.B.S.Virk, Deputy Advocate General, Haryana
for the respondent-State.

Mr.Nipun Vashisth, Advocate
for respondents No.2 to 5.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Vikram against State of Haryana and other respondents, challenging the impugned order dated 31.05.2014 passed by learned Addl. Sessions Judge, Gurgaon, vide which the application under Section 319 Cr.P.C. filed by the complainant was dismissed.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondents No.2 to 5 appeared and contested the petition.

I have heard learned counsel for the parties as well as learned

State counsel and have gone through the record.

From the record, I find that FIR in the present case has been registered on the statement of Vikram. It is stated in the FIR that in the elections, Umardeen had fought for the post of Sarpanch and Umardeen lost that election and for this reason, he used to keep jealousy with his family. On 24.05.2011 at about 4.30 p.m., complainant's son Andil was standing and at that time, Umardeen hit his car on Andil and complainant said to Umardeen that he is mature and should not behave in this way with the children. It is further stated that keeping in view the grudge of earlier elections, Umardeen called from his family Mushtak, Rustam, Numad, Zahir, Kamrudeen, Imran, Irfan, Irsad and Umar with an intention to fight and all of them started assaulting the complainant at one go. Umardeen hit *lathi* on complainant's head, Mushtak hit iron rod on his head, Umar hit *lathi* on the pindli of right foot of the complainant. On making noise, members of complainant's family Suman, Majid, Mukeem, Rafiq and complainant's wife Jaibuni, came for rescue but the accused persons beat them also. Numad with the intention to kill, fired on the chest of Mukeem from '*katta*' and Zahir fired upon Rafiq from the country made pistol and Rustam hit *lathi* on the head of Jaibuni. In this scuffle, Jaibuni, Mukeem, Rafiq, Sumar and Majid received injuries. It is also in the FIR that rest of them will tell about their injuries themselves.

From the perusal of the record, I find that challan was presented by the police in case FIR No.193 dated 25.05.2011 under Sections 148, 149, 323, 307 and 506 IPC against Imran, Mustak, Rustam, Irfan, Irsad and Umar. During the pendency of the trial, an application was moved by the prosecution through complainant under Section 319 Cr.P.C. for summoning

Umardeen, Numad, Zahir and Kamrudeen as additional accused. Learned

Addl. Sessions Judge, Gurgaon, dismissed the application vide impugned order dated 31.05.2014.

From the record, I find that the findings given by learned Addl. Sessions Judge, Gurgaon are not as per law. Learned trial Court has minutely discussed the statement of PW-1 Vikram and finding some discrepancies, dismissed the application. At the stage of deciding the application under Section 319 Cr.P.C., the Court is to appreciate the evidence only for the purpose finding of out whether it appears to the Court that the persons sought to be summoned as additional accused are involved in the commission of offence and should be summoned or not. The standard of proof, at this stage, is somewhat more than prima facie case. At this stage, the statement of the complainant cannot be minutely discussed to find out discrepancies etc. unless these discrepancies show that accused are not involved in the commission of the offence.

From the perusal of the FIR as well as statement got recorded by PW-1, I find that there is specific allegation against Umardeen that he hit his car on Andil son of the complainant and rather, he is the main accused. Umardeen accused called other persons and then the fight took place. It is also in the FIR that Umardeen hit *lathi* on complainant's head. There is also allegation that Numad with the intention to kill, fired on the chest of Mukeem. Kamrudeen has also been named and it is stated that all of them assaulted the complainant at one go. Qua Zahir, it is alleged that he fired upon Rafiq from the country made pistol which he was holding in his hand. At this stage, there is no need to find out whether any specific injury has been attributed to any of above-said additional accused or not. Learned

received fire arm injuries. Similarly, Mukeem has also received fire arm injury.

The perusal of the impugned order passed by learned Addl. Sessions Judge, Gurgaon, shows that it is not as per evidence and law. It appears from the evidence on record that persons sought to be summoned as additional accused are involved in the commission of the offence and they should be tried along with accused already facing trial.

Therefore, finding merit in the present petition, the same is allowed. Application under Section 319 Cr.P.C. filed by the complainant stands allowed. The trial Court is directed to proceed accordingly.

May 15, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No