

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

CRR-177-2016(O&M)
Date of decision: 3.8.2017

Ravinder Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S.MADAAN

Argued by: Mr.Akashdeep Singh, Advocate
for the petitioner.

Mr.Gaurav Bansal, AAG, Haryana
for respondent No.1.

Mr.S.S. Jattan, Advocate
for respondent No.2.

Mr.S.S. Antal, Advocate
for respondent No.4.

H.S. MADAAN, J.

This revision petition is directed against order dated 17.12.2015 passed by Sessions Judge, Ambala vide which application under Section 319 Cr.P.C. so filed by the prosecution had been dismissed.

Briefly stated, the facts of the case are that FIR No.120 dated 21.9.2013 for the offences under Sections 323, 302, 506 IPC was registered with Police Station Shahzadpur on the basis of statement made

by Ravinder Kumar son of Chuhan Ram (deceased) in which he stated that on 20.9.2013, his duty shift was to start from 5:00 p.m., as such he was present at bus-stand of Patarheri at about 3:00 p.m., when he received a telephonic call from Sonia wife of his younger brother namely Mukesh Kumar that a fight was taking place involving his father at the shop, as such, he reached the shop where he found his father Chuhan Ram and brother Harish Kumar to be present there. Bisheshar, his son Deepu and Jugnu @ Bedi son of Devraj and Ashwani son of Jeeta Ram were hurling abuses. Bisheshar Nath was having a *gandasi*, whereas his son Deepu was having iron rod, Jugnu and Ashwani were also holding iron rods; that Bisheshar Nath had given a *gandasi* blow hitting Chuhan Ram on forehead; that when Harish Kumar came forward to rescue his father, Deepu, Jugnu alias Bedi and Ashwani attacked him with rods; that then Bisheshar Nath turned towards the complainant with a *gandasi* at which he (complainant) ran away and raised alarm, hearing which, Shree Pal alias Pappu son of Kanwar Pal and various other villagers came there and that then the assailants ran away hurling threats to kill them on next opportunity. Chuhan Ram was almost unconscious due to injury and blood was oozing out of his head. Injured Chuhan Ram and Harish Kumar were taken to hospital at Shahzadpur and medico legally examined from there. Injured were referred to General Hospital, Ambala City. Harish Kumar was admitted there whereas Chuhan Ram was referred to GMCH, Chandigarh after an hour. The matter was investigated and only Bisheshar Nath was sent up to face trial whereas other persons namely Deepu, Jugnu alias Bedi and Ashwani were found to be innocent and were not

challaned.

During the trial, an application under Section 319 Cr.P.C was filed which was declined by the Court of Sessions vide impugned order, which left the complainant aggrieved and he has filed the present revision petition.

The trial Court has relied upon ratio of the authority **Hardeep Singh Versus State of Punjab, 2014 (1) RCR(Criminal) 623** by Constitutional Bench of Hon'ble Supreme Court which is followed by another pronouncement in **Babubhai Bhimabhai Bokhiria and Another Versus State of Gujarat and others, 2014(2) RCR(Criminal)(SC) 915**. In **Hardeep Singh's** case, the Constitutional Bench of Hon'ble Supreme Court had observed that power under Section 319 Cr.P.C. is a discretionary and an extraordinary power which is to be exercised sparingly and only in those cases where the circumstances of the case so warrant and further it is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence and that only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised and not in a casual and cavalier manner. It was further observed that test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short satisfaction to an extent that evidence, if goes un rebutted, would lead to conviction and that in absence of such satisfaction the Court should refrain from exercising power under Section 319 Cr.P.C. Similarly the Hon'ble Apex Court in **Babubhai Bhimabhai**

Bokhiria's case(supra) had observed as follows:

Section 319 of the Code confers power on the trial court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of prima facie case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher.

The trial Court had examined the case in hand on the touchstone of observations made by the Hon'ble Apex Court in the two cases referred supra and found that PW1 Ravinder had toed the line of prosecution so had injured Harish Kumar appearing as PW12, but then the medical evidence did not support such oral assertions. In MLR of Harish Kumar Ex.P4, out of four injuries mentioned, there is substantial injury in the form of one laceration, one abrasion, other complaint of pain in right arm below elbow joint with no external injury and pain in right hand. In that way, medical evidence does not support the evidence of PW12 Harish Kumar that he was given rod blows by accused Deepu, Ashwani and Jugnoo and this statement is in contradiction to statement of PW1 Ravinder that all the four accused had attacked Harish Kumar. Furthermore, such depositions are not in consonance with the medical evidence since in the post-mortem report of the deceased only one injury in the form of laceration on his forehead was observed, which is attributed

to accused Bisheshar Nath.

Learned counsel for the revision-petitioner in support of his arguments has referred to various authorities which are as under:

1. *Rajendra Singh Versus State of U.P. and Anr.*, 2007(3) RCR(Criminal)1022;
2. *Mann Singh and others Versus State of Punjab and another*, 2009(2) RCR(Criminal) 289;
3. *Jit Singh Versus State of Punjab and another*, 2006(4) Law Herald 3432; and
4. *Pramod Rai Versus State of U.P. & Anr.*, 2013(1)CCC 295.

But those authorities do not find application to the facts of the present case. The trial Court by a well reasoned order has dismissed the application. There is no illegality or impropriety therein which might have warranted interference by this Court while exercising powers of revisional under Section 401 Cr.P.C. Resultantly, the revision petition stands dismissed.

3.8.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No