

**CRR No.1814 of 2016 and
CRR No.1981 of 2016 (O&M)**

-1-

232 (2 Cases)

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

**CRR No.1814 of 2016
Date of Decision: 15.11.2017**

Satish @ Tisha

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CRR No.1981 of 2016 (O&M)

Jasbir

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Mr. Akshay Kumar Jindal, Advocate,
for the petitioner(s).

Mr. D.R. Singla, D.A.G., Haryana,
for respondent No.1.

Mr. R.S. Budhwar, Advocate,
for respondent No.2/complainant.

SUDIP AHLUWALIA, J. (ORAL)

These two petitions have been preferred against the impugned order dated 16.04.2016, passed by the Ld. Sessions Judge, Karnal, in the trial arising out of F.I.R. No.432, dated 12.10.2015, of Police Station Indri, District Karnal.

2. Vide the impugned order, the Ld. Trial Court, in allowing an application moved on behalf of the State under Section 319 of the Code of Criminal Procedure, directed summoning of the present two petitioners to face trial as additional accused persons.

3. It may be mentioned that in the initial F.I.R., presence of both the petitioners in the occurrence was certainly disclosed, although there were marked differences in the description of their respective roles in the occurrence as mentioned in the original F.I.R., and the subsequent statement of the victim Sahab Singh, while deposing as PW-1 in the Ld. Trial Court.

4. CRR No.1814 of 2016 has been preferred by petitioner, namely Satish @ Tisha, while CRR No. 1981 of 2016 is filed by petitioner, namely Jasbir.

5. This Court is to consider whether from the available material in “evidence” which term is being interpreted in its wider sense, since all the material collected during trial or even at the stage of enquiry, since specified in Paras 78 and 79 of the Constitutional Bench judgment of the Supreme Court in “**Hardeep Singh Vs. State of Punjab and others**”, **2014 (1) R.C.R. (Criminal), 623** is to be considered as “evidence” in the context of Section 319 of the Code of Criminal Procedure.

6. For this purpose, at this juncture, the version relating to presence/involvement of the two petitioners in the occurrence as disclosed in the original F.I.R., which incidentally was recorded by a Police Officer on the basis of statement of the victim, who was undergoing treatment in Hospital at the relevant time, is set out as below:-

“I came back started taking rest in my baithak. After about 30/35 minutes above said Johny and Jasvir Singh son of Dilawar Singh caste Jatt resident of Khukhani came to my baithak. Johny who was having red chili powder in his hand threw it in my eyes and hit me with the binda of Kassi (back side of spade) which he was having in his hand, on my head, arms and legs. After that due to chilli powder in my eyes I was blinded. I don't know that who else gave beatings to me after that. Then Johny sprinkled chilly in my eyes at that Jwala son of Jaswant singh caste jat and Tisha son of Jagmal caste Jat, resident of Khukhani were also present. After giving beatings to me the above said Johny ran away from the spot and while leaving the spot threatened that today you have been spared, but in future will kill you.”

7. It may be mentioned here that in view of the aforesaid statements in the F.I.R., names of both the petitioners were not sent up for trial after investigation. On the other hand, they were shown in Column No.2 of the challan and petitioner, namely Satish @ Tisha, was even cited as a witness from the prosecution side.

8. However, while deposing during the trial, the complainant as PW-1 gave the following statements:-

“After about thirty minutes, Satish son of

Jagmal resident of Village Khukhni, came and asked me to open the door but I did not open the same. Thereafter, Jasbir son of Dilawar Singh, resident of our village, also came there and asked me to open the door of my baithak. I switched on the light and then opened the door. Thereafter, accused Jony, above said Satish and Jasbir entered in my baithak. At that time, accused Jony and Satish were having bindas (wooden handle of spade) in their hands and accused Jony gave me blows with binda on my left shoulder, left forearm, upon which, I tried to run away, but I was caught hold by above said Jasbir, who was standing at the door. Jasbir told that Sahab Singh be taught lesson to convene panchayat. Thereafter, accused Jony took out chilly powder from his pocket and sprinkled the same in my eyes and gave binda blow on my head. Above said Satish also gave binda blow on my left thigh. On raising hue and cry by me, Balwinder son of Sulekh Chand and my son Aman, who were sitting in the baithak of Sukhbir situated nearby to my baithak, reached at the spot. On seeing them coming there, accused Jony and above said Satish and Jasbir fled away and while fleeing, accused Jony threatened that if I convened a panchayat, he would kill me.”

9. From the aforesaid two versions regarding the occurrence as coming from the mouth of the victim, it is seen that undoubtedly, the main culprit as well as assailant was accused Jony, who of course was charge-sheeted and sent up for trial, but even presence of both the petitioners at the place of occurrence at the relevant time was also undeniable.

10. The complainant, however, did not make any statement in the

F.I.R. to the effect that either of them had actually assaulted him at the relevant time. He further also stated that he had been blinded on account of chili powder having been thrown in his eyes, for which reason he was unable to say “who else” gave beatings to him after that.

11. In the given circumstances, in a broader perspective, the involvement of both the petitioners in the alleged assault would appear to be made out on account of the qualifying statement of the complainant to the effect that he was unable to see exactly who all assaulted him, although the petitioners were undoubtedly present at the spot.

12. But as laid down by Supreme Court in the case of **Hardeep Singh Vs. State of Punjab and others** (supra), for the purpose of summoning under Section 319 of the Code of Criminal Procedure, “*the testing that has to be applied as one which is more than prima-facie as exercised at the time of framing of charge, but short of satisfaction to extent that the evidence, if goes un rebutted, would lead to conviction ...*”

13. It, therefore, follows that undoubtedly for a purpose of invoking Section 319 of the Code of Criminal Procedure, a bare statement implicating a person may not be sufficient to cause him to face trial. It has thus to be somewhat more convincing than a bald assertion of his alleged involvement, for which purpose the Court is not prevented from examining the same along with the other material collected even during enquiry to ascertain whether it satisfies the test of “more than *prima-facie* case”.

14. In the given circumstances, therefore, when it is seen that an altogether new story regarding the petitioner Satish @ Tisha having first approached the complainant asking him to open his door has been

introduced during trial, which was totally missing from the complainant's version in the original F.I.R., the subsequent statement to the effect that the said petitioner gave “*binda* blow” on the complainant's left thigh clearly becomes suspect, and also in marked contradiction to his earlier explanation that on account of being blinded by chili powder, he could not see who all had assaulted him.

15. Even otherwise, the statement of witness Jwala son of Jaswant Singh, who according to the prosecution side also witnessed the occurrence, similarly gives a clear clean chit to petitioner Satish @ Tisha.

16. The same conclusion can, however, not be drawn qua petitioner Jasbir, since the original F.I.R. undoubtedly mentioned about his having accompanied the main culprit Jony, who had come to the complainant's house and assaulted him apart from throwing chilli powder in his eyes. There is no stark embellishment or improvement in the version pertaining to this particular petitioner, which might persuade this Court to hold that a more than *prima-facie* case is not made out against him.

17. For the aforesaid reasons, CRR No.1814 of 2016 is allowed, while CRR No.1981 of 2016 is dismissed.

18. The impugned order is modified to the extent that summoning of petitioner Satish @ Tisha is quashed, while it is upheld in case of petitioner Jasbir.

19. Disposed off.

15.11.2017

Apurva

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/ reasoned : Yes/ No
2. Whether reportable : Yes/ No