

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

**CRR No.4048 of 2015 (O&M)
Date of Decision: October 23, 2017**

Nawabuddin

...Petitioner

VERSUS

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Ravi Malik, Advocate for
Mr.Sanjeev Kr. Panwar, Advocate
for the petitioner.

Mr.Kuldeep Sharma, Deputy Advocate General, Haryana
for the respondent-State.

Mr.D.S.Matya, Advocate
for respondents No.2 and 3.

INDERJIT SINGH, J.

The present revision has been filed by the petitioner Nawabuddin against State of Haryana and other respondents, challenging the impugned order dated 09.09.2015 passed by learned Addl. Sessions Judge, Palwal, vide which the application filed by the petitioner under Section 319 Cr.P.C. for summoning additional accused was partly allowed and accused Vakila was summoned and application qua summoning of respondents No.2 and 3 was dismissed.

Notice of motion was issued. Learned State counsel as well as learned counsel for respondents No.2 and 3 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 challan was presented in this case against Samsu @ Samsuddin and other accused. During the pendency of the trial, an application under Section 319 Cr.P.C. for summoning Israile, Mustkim and Vakila as additional accused was filed. The application was partly allowed by summoning accused Vakila as additional accused and qua Israile and Mustkim, the application was dismissed vide impugned order dated 09.09.2015. Aggrieved from the impugned order, present revision petition has been filed.

The brief facts of the case as noted down in the impugned order dated 09.09.2015 passed by learned Addl. Sessions Judge, Palwal, are as under:-

“2. Facts necessary for the disposal of the present application are that complainant Nawabdin has made complaint to the police to take necessary action against Aarif son of Samsuddin, Nasir son of Vakila, Israile son of Ishak, Sharif son of Israile, Mustkin & Lukman sons of Usman, Jamshed son of Samsuddin, Javed son of Abdul Rehman, Faruk son of Ab. Rehman, Jahid son of Ayyub, Farida wife of Fakhru, Samsu, Jafar, Vakila, Rashid sons of Daud and Sakila wife of Din Mohammad, residents of village Kumbhreda, P.S. Bahin, District Palwal, on the allegations that on 8-9.10.2014, Yusuf son of Din Mohammad and Noman son of Israile who are the resident of their village had forcibly kidnapped his cousin Wasima daughter of Samsuddin and about which they had lodged the FIR no.73/14, P.S. Bahin. Due to this enmity, above said accused in connivance with each other duly armed with weapons i.e. Lathi, Danda, Saria & Ballam etc., on 10.10.2014 at about 9.30 a.m. came to their house. On coming their house, accused Israile son of Ishak gave Farsa blow on his head, Vakila gave Saria blow on his neck and Mustkin son of Usman gave Farsa blow on the head of Akbar son of Sirdar @ Gaddar and Samsuddin son of Daud gave Farsa blow above his ear (temple). Other accused pelted bricks and stones upon them. Accused Aarif son of Samsuddin said that he (complainant) had levelled false allegations against their brothers and they will teach a lesson for it. When they raised

alarm “Bachao-Bachao”, Harun son of Mohar Khan, Jabbar son of Sirdar, Hakmuddin son of Ramjani and Arshad son of Sarpuddin came there and they saved them from the clutches of accused. While going, accused have threatened them to kill.”

From the record, I find that in the FIR as well as in the statement of the injured witnesses, both the private respondents i.e. Israile s/o Ishak and Mustkim s/o Usman have been named. They are specifically stated to be armed with Farsa each and specific injuries have been attributed to them. As per prosecution version as well as evidence of the witness recorded before the Court, Israile gave Farsa blow on the head of Nawabuddin whereas Mustkim gave Farsa blow on the head of Akbar. It is not disputed at the time of arguments that these injuries are there in the MLR of Nawabuddin and Akbar.

At the time of summoning additional accused, it should appear to the Court that persons sought to be summoned are also involved in the commission of offence and they should be tried along with other accused. In view of the fact that there are statements of injured witness as well as complainant showing the role attributed to these private respondents and in view of the fact that injuries are there on the person of injured, it appears to this Court from the evidence that respondents No.2 and 3 are also involved in the commission of offence in this case.

At the time of summoning additional accused, the standard of proof is somewhat more than prima facie case and less than that this evidence will lead to conviction of the accused. Learned trial Court has committed illegality while dismissing the application qua Israile and Mustkim by discussing the evidence in minute details and relying upon the discrepancies etc. At this stage, the Court is not to scrutinize the evidence

minutely as it is deciding the case finally. This is not the requirement of law. At this stage, only the Court is to see whether it appears that persons sought to be summoned as additional accused are involved or not in the commission of the offence and they should be tried with other accused or not.

In view of the above discussion, I find merit in the present revision petition and the same is allowed. The impugned order dated 09.09.2015 passed by learned Addl. Sessions Judge, Palwal, to the extent of dismissal of application qua respondents No.2 and 3 i.e. Israile and Mustkim, is set aside and the application under Section 319 Cr.P.C. qua them is also allowed. Learned trial Court is directed to proceed further in this case after giving notice to the respondents.

However, nothing stated above, shall constitute my opinion on merits of the case.

October 23, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No