

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

CRR-4338-2015

Date of decision: 20.9.2017

Nihal Singh and others

...Petitioners

Versus

State of Haryana and another

...Respondents

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

Present: Mr.Jitender Dhanda, Advocate
for the petitioners.

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

Mr.Vishal Rattan Lamba, Advocate
for respondent No.2.

H.S. MADAAN, J.

This revision petition is directed against the order dated 9.10.2015 passed by the Court of learned Additional Sessions Judge, Hisar vide which he had summoned petitioners – Deep Chand, Dharampal and Nihal Singh under Section 319 Cr.P.C. as additional accused to face trial along with the accused already facing trial.

Such petitioners – Deep Chand, Dharampal and Nihal Singh pray that the revision petition be accepted, the impugned order passed by the trial Court be set aside and application under Section 319 Cr.P.C. be

dismissed.

Briefly stated, facts of the case as per prosecution story are that criminal machinery in this case was set into motion by complainant Amar Chand son of Chunni Lal of Jat community, resident of Moda Khera, aged 62 years, who got his statement recorded with the police on 13.1.2015, wherein he stated that he is an agriculturist; that he has got a dispute with his cousin brother regarding landed property; that on that day at about 7:30 a.m., Deep Chand, Mahender, Neki Ram, Surjeet, Dharampal, Nihal Singh son of Ami Lal, Hanuman and Pawan sons of Deep Chand, residents of Moda Khera besides Nihal Singh son of Moman, resident of Kheran Kalan, Punjab accompanied by 10-12 persons armed with lathies, dandas trespassed in his house and attacked him; that he was sleeping in outer room (Baithak) of his house; that they broke open the door of that room and abducted him taking him to the house of Neki Ram, where Neki Ram gave an iron pipe blow hitting him on left leg; that Dharampal and Hanuman having lathies caused him blows on legs whereas remaining persons armed with lathies and dandas assaulted him with such weapons besides giving him fist blows; that he raised alarm, which attracted his brother-in-law Mahender and people from neighbourhood, who came there and rescued him taking him to hospital where he was medically examined. On the basis of such statement, formal FIR for the offences under Sections 147, 148, 323, 365, 367, 427, 452 IPC was registered with the police Station. The matter was investigated. Out of the persons named, six of them, namely, Hanuman, Nihal Singh, Pawan, Sarjit, Mahender and Neki Ram were sent up to face trial. During the

course of trial, statement of complainant Amar Chand was recorded wherein he corroborated the statement made by him before the police in which he had named Deep Chand, Dharampal and Nihal Singh as assailants, besides the other accused already facing trial. The trial Court vide a detailed order summoned such Deep Chand, Dharampal and Nihal Singh as additional accused to face trial along with other six co-accused. This order left such additional accused aggrieved and they have filed the present revision petition, praying that the same be accepted and the impugned order passed by learned trial Court is set aside and application under Section 319 Cr.P.C. be dismissed.

Notice of the petition was issued to the respondents, in response of which State counsel and complainant through counsel put in appearance.

I have heard learned counsel for the parties besides going through the record and I find that there is no merit in the revision petition.

Learned counsel for the petitioners has argued that there is no medical evidence showing the role of petitioners. No specific role has been attributed to the petitioners, therefore, they have been wrongly summoned by the trial Court. Whereas learned counsel for the complainant has contended that as per allegations in the FIR, the assailants including the petitioners had not only assaulted the complainant with lathies and dandas but had also given him fist blows and had abducted him from his house taking him to the house of Neki Ram, which itself constitute an offence.

After hearing the rival contentions of the parties, I find that

the arguments advanced by learned counsel for the petitioners are without merit. It has to be kept in mind that the offence which is disclosed against the persons named in the FIR is of committing rioting, forming unlawful assembly having common object voluntarily causing simple hurt to complainant, kidnapping/abducting the complainant with intent to secretly and wrongfully confined him, criminally trespassing in house of complainant after making preparation for hurt/assault or wrongful restraint, committing mischief and criminal intimidation. Therefore, merely because of the fact that many injuries were not found on the person of complainant commensurate with the number of assailants does not go to prove their innocence. Furthermore, as regards no specific role attributed to the petitioners in the FIR, it is to be taken note of that FIR is certainly not a substantive piece of evidence and its only purpose is to set the criminal machinery in motion. FIR is often lodged in hurry and it may not contain the minute and precise details of the incident. The FIR can be got registered by a person, who may not be an eye-witness of the incident. It is only during investigation of the case that police can come to know about the culprits and criminals, who had committed the crime. Furthermore, when a person is assaulted by so many assailants, it is difficult to remember the precise role played by each of the assailant.

As regards the authority referred to by learned counsel for the petitioners *Chander and another Versus State of Haryana, 2015(3) R.C.R.(Criminal) 764* by a Co-ordinate bench of this Court, there is no dispute with the observations made therein that power under Section 319 Cr.P.C., which is discretionary is to be exercised sparingly and only in the

cases when the circumstances of the case so warrants and not at the asking of prosecution or the complainant. In the instant case, the trial Court after discussion of all the aspects and keeping in view the legal position more particularly in light of landmark judgment on the subject given by Hon'ble Apex Court i.e. **Hardeep Singh Versus State of Punjab and others, 2014(1)R.C.R.(Criminal) 623** had allowed the application.

In view of the above discussion, no infirmity or illegality in the impugned order is found to be there, which might have warranted interference by this Court while exercising the revisional jurisdiction. Resultantly, the revision petition stands dismissed.

Copy of the order be sent to the trial Court for information and necessary action.

20.9.2017
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No