

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-3454-2016 (O&M)

Date of decision: February 08, 2017.

Des Raj

... **Petitioner**

v.

State of Punjab and others

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri Kulbhushan Raheja, Advocate for the petitioner.

Shri Abhishek Chautala, Assistant Advocate General, Punjab.

Shri Salil Bali, Advocate for respondent Nos.2 & 3.

A.B. Chaudhari, J. (Oral):

By the present petition, there is challenge to the order dated 22.8.2016 passed by the learned judge in a pending case bearing SC No.14 of 25.8.2016 arising out of FIR No.08 dated 25.1.2014, under Sections 302, 307, 324, 323, 148, 149 IPC and 27, 54, 59 of the Arms Act, registered at Police Station Mamdot, District Ferozepur, by which he rejected the application under Section 319 Cr.P.C. for summoning Balwinder Singh, Resham Singh and Gurmej Singh.

At the time of filing of this petition, the petitioner has made a statement in para 4 of the revision petition that the impugned order qua Gurmej Singh is not being challenged because he has died.

The question therefore remains only about issuance of summons in respect of two persons, namely, Balwinder Singh and Resham Singh. In so far as the FIR is concerned, as to Balwinder Singh and Resham

Singh, following are the allegations:-

“ ... Angrej Singh and Resham Singh brought out their two .12 bore guns, while Gurmej Singh brought gandasa. They were also accompanied by Jajj Singh son of Jagir Singh, armed with takua, Balwinder Singh son of Angrej Singh, armed with sword, Sukhwinder Singh, Manjit Singh son of Kashmir Singh armed with swords, Bakshish son of Jagir Singh armed with daang, who also came over there. Resham Singh raised lalkara to the effect that they may be caught and taught a lesson for having quarrel with our boys and complaining in the matter.”

Thereafter, the trial commenced and petitioner Des Raj was examined before the trial court as a prosecution witness and he stated thus in his evidence before the trial court:-

“... Angrej Singh and Resham Singh brought their 12 bore guns, Gurmej Singh was having Gandasa, Manjit Singh and Sukhwinder Singh both sons of Kashmir Singh were having kirpans. Juj Singh son of Jagir Singh was having takua, Bakshish Singh son of Jagir Singh was having danda, Balwinder Singh son of Angrej Singh was having kirpan, Resham Singh raised that they may be taught a lesson for complaining about the quarrel of their boys with our boys, then Bakshish Singh, Sukhwinder Singh and Manjit Singh caught hold of me. Sukhwinder Singh gave a kirpan blow which hit on the left side of my head. Bakshish Singh gave dang blow twice which hit on my left ear. Manjit Singh was still holding me. In the meantime, Pippal Singh my cousing, Surat Singh and Balwinder Singh intervened. Then Gurmej Singh gave gandasa blow which hit on the left side of head of Pippal Singh. Juj Singh gave takua blow from the reverse side on the person of Pippal Singh which hit on the left index finger. Then Angrej Singh fired a shot from his 12 bore gun toward Surat Singh from very close which hit on the left eye and nose. Then Balwinder Singh gave blow with the pointed end of Kirpan on the left portion of the neck of Surat Singh Surat Singh fell down, Resham Singh gave a fire arm shot with his 12 bore gun which hit

the left shoulder of Balwinder Singh. Balwinder Singh fell down.”

Learned Counsel for the petitioner submitted that the trial court committed an error in not summoning additional accused under Section 319 Cr.P.C. though there is a direct evidence. Per contra, learned counsel for the respondents vehemently opposed the petition and argued pointing out the papers regarding medical evidence and contended that the injuries in the medical evidence do not at all corroborate about any injury by Balwinder Singh and Resham Singh. According to him, the injuries in respect of Balwinder Singh and Resham Singh which have been alleged, do not at all occur in the medical evidence and therefore, there is hardly any likelihood of conviction in the wake of evidence. To a pointed query as to the participation of Balwinder Singh and Resham Singh in the unlawful assembly that had assembled and committed the offence, learned Counsel for the respondents submitted that it cannot be held at this stage that there was unlawful assembly of which Balwinder Singh and Resham Singh were the members and therefore this Court should not interfere with the impugned order. He relied on the Constitutional Bench judgment of the Apex Court in the case of Hardeep Singh v/s State of Punjab, 2014(1) RCR (Crl.) 623 rendered by the Supreme Court on 10.1.2014.

Having heard learned Counsel for the rival parties, I have perused the entire record carefully, so also the law applicable thereto. I have also seen the MLC reports produced before me by learned Counsel for the respondents prepared by Gur Gobind Singh Medical College and Hospital, Faridkot. In my opinion, looking to the FIR as well as the evidence of the doctor before the court, the evidence of unlawful assembly

of which Balwinder Singh and Resham Singh were members, is writ large. Apart from that, it is also seen that there is an overt act on the part of both of them, namely, Balwinder Singh and Resham Singh, which I have quoted above. Merely because as contended by learned Counsel for the respondents that there is some scope or variance in respect of the medical evidence compared to the ocular evidence, the application under Section 319 Cr.P.C. cannot be thrown out qua Balwinder Singh and Resham Singh. I quote para 98 and 99 from the judgment of Hardeep Singh, which read thus:-

“98. Power under Section 319 Cr.P.C. is a discretionary and an extra- ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. 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. 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.

99. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The 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 of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if ‘it appears from the evidence

that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."

At any rate, the aspect about the medical evidence or the injuries will have to be looked into by the trial judge at the time of appreciation of the evidence. Suffice it to say, for the present, there is direct evidence in the form of ocular evidence against the two. In the result, I make the following order:-

ORDER

- (i) impugned order dated 22.8.2016 is quashed and set aside;
- (ii) application for summoning Balwinder Singh and Resham Singh is allowed;
- (iii) trial court to proceed further in accordance with law.

February 08, 2017.

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[A.B. Chaudhari]
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No