

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-3470-2016 (O&M)
Date of decision: 01.11.2017

Rakesh and another

....Petitioners

Versus

State of Punjab and anr.

....Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rajiv Joshi, Advocate
for the petitioners.

Ms. Rajni Gupta, Sr. DAG, Punjab.

Mr. B.D. Sharma, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN J. (Oral)

Prayer in this petition is to set aside the order dated 22.07.2016 vide which the application filed by the prosecution under Section 319 of the Code of Criminal Procedure ('Cr.P.C.' for short) for summoning the petitioners as additional accused was allowed.

At the time of issuance of notice of motion, the petitioners have withdrawn the petition qua petitioner No.1 Rakesh son of Chattu Gir and notice of motion was issued only qua petitioner No.2 Meshi son of Chattu Gir.

It is submitted on behalf of the petitioner that as per the investigation report (Annexure P-9), petitioner No.2 was found to be admitted in a private hospital from 08.10.2013 to 12.10.2013 and therefore,

he was found to be innocent. It is also submitted on behalf of the petitioner that there is no specific allegation against the petitioner in the FIR. Counsel for the petitioner has relied upon **2017 (3) Recent Apex Judgments (R.A.J.) 547 Brijendra Singh and others Vs. State of Rajasthan** in support of his arguments to submit that the Hon'ble Supreme Court has held that while exercising the power under Section 319 Cr.P.C., the trial Court should not rely upon the evidence which is already there on the record, recorded by the police under Section 161 Cr.P.C. at the time of investigation and the Court should pass summoning order under Section 319 Cr.P.C. if much strong evidence has come on record.

On the other hand, learned State counsel, on instructions from HC Ram Singh and assisted by learned counsel for the complainant-respondent No.2, submitted that after registration of the FIR, police has recorded statement of the injured Ritu under Section 161 Cr.P.C. and as per the statement, which was again corroborated by her, while appearing as PW4 on oath before the trial Court, petitioner No.2 Meshi had given a rod blow on her forehead with the intention to kill her. It is further submitted that this injury which has been attributed to petitioner No.2 is corroborated from the statement of PW2 Dr. Raj Kumar Badhan, where injury No.1, on the person of PW4 Ritu, has been found to be a lacerated wound with swelling on the left side of forehead. It is thus submitted that the evidence which has come on record is not only the statement of injured PW4 Ritu under Section 161 Cr.P.C. but her deposition before the trial Court on oath is duly corroborated by the Medical Officer Dr. Raj Kumar Badhan PW2.

Accordingly, I find that the trial Court has summoned

petitioner No.2 Meshi, on the basis of appreciation of the ocular as well as the medical version, which has come on record, prima facie proving that petitioner No.2 Meshi was present at the spot and caused injury on forehead of the injured PW4 Ritu. For the reasons stated above, I find no merit in the present petition and the same is dismissed. However, the observations made above are only for the purpose of deciding the present petition and will have no bearing on merits of the case.

(ARVIND SINGH SANGWAN)
JUDGE

01.11.2017
vishnu

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No