

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

CRL. REVISION No.3475 OF 2016
DATE OF DECISION : 13 SEPTEMBER, 2017

Devender Singh @ Billu

.... Petitioner

Versus

State of Haryana & others

.... Respondents

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

* * * *

Present : Mr. Keshav Pratap Singh, Advocate for the petitioner.

Mr. Chetan Sharma, AAG, Haryana
for respondent No.1-State.

Mr. Pankaj Bali, Advocate
for respondents No.2 to 11.

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A. B. CHAUDHARI, J.

This is a petition filed by the complainant for challenging order dated 23.08.2016 passed by the trial Court dismissing the application under Section 319 Cr.P.C. for summoning the additional accused.

Heard learned counsel for the rival parties.

In support of the petition learned counsel for the petitioner at the outset submitted that he would not press the present petition in the matter of summoning the accused persons i.e. respondents No.2 to 9 under Section 319 Cr.P.C.. However he submits that he is pressing for exercise of power under Section 319 Cr.P.C. qua respondent No.10 and 11 namely Vinod and Mohan.

The statement of counsel for the petitioner is accepted.

Accordingly the petition qua respondents No.2 to 9 stands dismissed as not pressed.

He then submitted that insofar as Vinod and Mohan are concerned, there is overt act attributed to them before the Court below when evidence was recorded during the trial Court. The specific role was attributed to them but the trial Court did not give any reason for not accepting the plea for summoning them. According to him the specific role attributed to them is such that the parameters laid down by the Constitution Bench of Apex Court in the case of **Hardeep Singh versus State of Punjab and others, 2014(3) SCC 92** and therefore, he prayed for allowing the petition.

Per contra, learned counsel for respondents vehemently opposed the petition and submitted that there is a contradiction and discrepancy in the FIR and the deposition made before the Court in the matter of these proposed two accused persons and therefore, the trial Court has rightly rejected the application for exercising power under Section 319 Cr.P.C. against them. He further submitted that the parameters laid down in the case of **Hardeep Singh (supra)** are not satisfied. He, therefore, prayed for dismissal of the petition.

I have gone through the impugned order as well as the evidence of Devender @ Billu PW-1 i.e. the petitioner and have also gone through the first information report. The relevant portion of the evidence of the witness i.e. the petitioner about Vinod and Mohan is reproduced as under:

“Thereafter, Sheo Ram gave a hockey blow on my head and hockey was broken, as result of which, I had suffered injuries in my head. Thereafter, Mohan

brought a rifle from car and handed it over to Rajender, then Rajender handed over the same to Sheo Ram and asked him to fire a shot upon Billu Sarpanch and kill him. Meanwhile, Vinod son of Ajmer Singh also fired a shot upon me from his revolver. I saved myself by sitting on the ground. Thereafter, Sheo Ram pointed out his rifle upon me and I moved myself back about 8-9 steps. Thereafter, Risala stated that fired a shot upon Billu Sarpanch so that he be killed. Sheo Ram fired a shot upon me with intent to kill me which hit on left side of my stomach below chest.”

The above evidence to my mind clearly satisfies the ingredients required by the Constitution Bench of Apex Court in the case of *Hardeep Singh (supra)*. It is seen that Vinod son of Ajmer Singh fired a shot upon him (petitioner) from his rifle but he saved himself by sitting on the ground. Insofar as Mohan is concerned the only evidence is that he had brought a rifle from the car and handed over to Rajender.

To conclude, insofar as Mohan is concerned there is no role attributed to him regarding any actual assault and therefore the petition against Mohan will have to be rejected.

Insofar as Vinod is concerned, there is direct attribution to him, which is seen from the above evidence that he has fired a shot on witness-Devender.

In that view of the matter, the prayer made by the petitioner, only against respondent No.10-Vinod, would succeed and insofar as another respondent i.e. respondent No.11-Mohan is concerned the same will have to be dismissed. In the result, I make the following order:

ORDER

- (i) CRL. REVISION No.3475 OF 2016 is partly allowed.
- (ii) The application under Section 319 Cr.P.C. for summoning respondent No.10-Vinod is allowed.
- (iii) The petition against respondent No.11-Mohan is dismissed.
- (iv) The petition against respondents No.2 to 9 stands dismissed as not pressed.

13 SEPTEMBER, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>