

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

(1)

CRR-1318 of 2017(O&M)
Date of decision: 21.8.2017

Khachera

...Petitioner

Versus

State of Haryana and another

...Respondents

(2)

CRR-2299 of 2017(O&M)

Ranjeet @ Bhura

...Petitioner

Versus

State of Haryana and another

...Respondents

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

Present: Mr.Bikram Chaudhary, Advocate
for the petitioner in CRR No.1318 of 2017.

Mr.S.K. Tripathi, Advocate
for the petitioner in CRR No.2299 of 2017.

Mr.Neeraj Poswal, AAG, Haryana.

Mr.Deepender Singh, Advocate
for respondent No.2.

H.S. MADAAN, J.

By this order, I shall dispose of two criminal revisions i.e.

CRR-1318 of 2017 petitioner Khachera and CRR-2299 of 2017 filed by petitioner Ranjeet, both of them being aggrieved with order dated 18.2.2017 passed by learned Additional Sessions Judge, Faridabad vide which both the petitioners have been summoned as additional accused while allowing application under Section 319 Cr.P.C.

Briefly stated, facts of the case are that FIR No.337 dated 14.5.2016 for the offences under Sections 148, 149, 450 and 307 IPC, subsequently Section 302 IPC also added, besides Section 25 of the Arms Act was recorded on the basis of written complaint submitted by complainant Kuldeep son of Yograj of Gujjar community, resident of House No.161, Gujjar Chowk, Garg Colony II Ballabgarh submitted to Incharge, Police Post, Adarsh Nagar, Ballabgarh on 13.5.2016, wherein he submitted that on the said date at about 10:30 night his father Yograj was at home sitting on the roof; at that time Sandeep Kumar of Gujjar Community, resident of Nimka armed with a revolver hurling abuses came at the door of the house asking his father to come down stating that he would teach him a lesson; that said Sandeep Kumar was being accompanied by his friends, namely Bhura, Sanjay, Sunil, Babli, Kalli and 3-4 other persons holding lathies, dandas and handle of tap in their hands; that when Yograj started coming down from the stairs, Sandeep fired at him from front and thereafter the complainant controlled his father and Sandeep along with his accomplice ran away. According to the complainant, he made his father sit on the motorcycle and took him to Government Hospital from where he was referred to hospital at Delhi. According to complainant, the incident was witnessed by him, his

maternal aunt and younger brother.

Initially, FIR was registered for the offences under Sections 148, 149, 450 and 307 IPC and 25 of Arms Act but when Yograj succumbed to the injuries suffered by him offence under Section 302 IPC was added. Accused Sandeep and Amit @ Babli were arrested in this case and were sent up to face trial. During the course of trial, statement of complainant Kuldeep was recorded as PW1. The relevant part of his statement is reproduced as under for easy reference:

“Stated that on 13.5.2016, my father Yograj was on the roof of the house and I was watching television downstairs at about 10:30 p.m., then, I heard noise from outside our house, and when I came out, I noticed that Sandeep, his brothers Kalli & Preet, Sanjay and his brother Sunil, Bhura, Khachera, Gagan and his brother Babli @ Amit had broken the latch of our house and had come inside. My younger brother Monu and my Mausi Lalita also came out. Sandeep called out to my father and told him to come outside, so that he can be taught a lesson. Sandeep was armed with a revolver, whereas the others were armed with lathi, danda, & tap handle. When my father came down from the stairs, Sandeep fired a shot, which hit my father on the right side below his chest and the bullet came out from the rear side. By uttering the words “mar dia – mar dia”, they all fled away from the spot on one

motorcycle and two cars.

X x x x x

Other accused namely Ranjeet @ Bhura, Khachera are not present in the Court today and have been sent by police for trial. Other accused namely Kali, Sanjay and Sunil are also not present in the Court today, who were involved in the present case and yet to be arrested.”

Thereafter, an application was moved on behalf of the complainant under Section 319 Cr.P.C., copy thereof was supplied to defence counsel. However, for the reasons best known to the trial Court, it ordered issuance of notice to the proposed accused for filing reply/objections though the same was not required and uncalled for. Thereafter, learned trial Court passed the impugned order allowing the application.

Feeling aggrieved from the said order, such persons approached this Court by filing the present petitions, notices of which were issued to the respondents. Respondent No.2 – complainant appeared through Mr.Deepinder Singh, Advocate while respondent – State appeared through State counsel.

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

The main contention of learned counsel for the petitioners has been that no injury is attributed to either of the petitioners, as such no

offence is shown to have been committed by them. The trial Court could have summoned them only if satisfied that there was enough evidence available which was likely to lead to their conviction but no such satisfaction has been recorded, therefore, order is bound to be set aside.

On the other hand, learned State counsel has argued that the trial Court had applied its mind properly while allowing the application so much so it afforded an opportunity of being heard to the proposed accused i.e. petitioners and then order had been passed. The very fact that the two accused had accompanied the main culprit trespassing in the house of the complainant and main accused Sandeep had fired a shot from his revolver, hitting Yograj in their presence and thereafter all of them had fled from the scene of occurrence goes to show their common intention in committing murder of Yograj and furthermore they had committed offence of house trespass also. Therefore, they have been rightly summoned by the trial Court.

After hearing the rival contentions, I find that admittedly FIR is not a substantive piece of evidence and its purpose is to set the criminal machinery in motion. Since normally it is lodged in hurry, most of the times the minute details of the incident cannot be incorporated therein. Only during the investigation of the case, it transpires as to who had committed the crime and in what manner. Petitioner Ranjit @ Bhura is specifically named in the FIR, whereas regarding Khachera it is stated that his role and identity came to light while recording statement of witnesses under Section 161 Cr.P.C. In the FIR, it is mentioned that Sandeep along with his friends Bhura, Sanjay, Sunil, Babli, Kali and 3-4 other persons

having lathies, dandas and handle of tap in their hands had arrived at the house of complainant. The identity of those 3-4 persons could be found out during investigation only and one of such persons came out to be Khachera. Khachera cannot take advantage of the fact that his name is not specifically mentioned in the FIR. As regards names of such petitioners having been dropped by ACP on the basis of statement of their family members, the trial Court has specifically observed that the police arbitrarily exercised its power in exonerating them. The conclusion arrived at by the Court during trial is on much higher footing than an inference drawn by a police officer during inquiry or investigation. Merely because names of petitioners had been dropped by ACP and they were exonerated does not mean that they cannot be summoned by the trial Court on the basis of evidence adduced before it at a later stage. It is subjective satisfaction of the trial Court which is to be arrived at whether the persons sought to be summoned to face trial along with accused already facing trial need to be implicated as additional accused. The trial Court after discussing the rival stands taken by the parties has come to such conclusion while allowing the application. Therefore, just because the trial Court has not specifically observed that evidence on file is such which is likely to end in conviction of the persons summoned as additional accused does not mean that the said factor was not taken into consideration. The revision petitions are doomed for failure on merits and in addition to that CRR-2299 of 2017 filed by Ranjeet @ Bhura is to be dismissed being on the ground of limitation also having been filed beyond period of limitation and there being no justification for condonation of

delay of 46 days in filing the revision petition.

Finding no merits, both the petitions stand dismissed.

21.8.2017

Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No