

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

**CRR No.183 of 2017(O&M)
Date of Decision: 14.02.2017**

Sawai Hussain

.....Petitioner

Versus

State of Haryana and others

... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Pankaj Kundra, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

CRM No.4695 of 2017

For the reasons mentioned in the application, the same
is allowed.

Accompanying documents are taken on record subject
to all just exceptions.

Main case

[1]. Petitioner has assailed order dated 15.12.2016 passed
by Additional Sessions Judge, Nuh whereby application under
Section 319 Cr.P.C filed by the petitioner for summoning the
additional accused was dismissed.

[2]. Prosecution story started with the allegation that one
month prior to 11.08.2013, a panchayat was held on three
occasions in which respectables of the village participated. The
matter could not be compromised in respect of occurrence of
looting of dumper by Mubarik, Sajid, Ballu, Jakar, Khalli and

Ansar all residents of Chuhadpur (Rajasthan). The matter could not be compromised on 10.08.2013 as well and ultimately, panchayat was disbursed. Some of the persons present there started quarreling with the complainant party. Except Fajrudin father of the complainant/petitioner, all other succeeded in running away from the spot and waited for Fajrudin on the main road. After having waited sufficiently, they started search of Fajrudin. Dead body of Fajrudin was found in the foothills of village Noorpur. FIR was registered. After investigation, the police challaned only Sajid whereas other accused were found innocent in the investigation of the police.

[3]. Thereafter, petitioner filed CRM-M No.1122 of 2014 under Section 482 Cr.P.C for issuance of direction to hand over the investigation to some independent agency. During the course of proceedings in the aforesaid case, this Court was pleased to pass order dated 12.08.2014, ordering investigation of the case by a Special Investigating Team (for short 'SIT') to be constituted by Director General of Police, Haryana. State of Haryana was directed to place on record the latest status report of SIT thereafter. Consequently, SIT was constituted and the petition was disposed of.

[4]. After investigation conducted by SIT, supplementary challan was filed again accused Tarif and Zarin. The aforesaid

accused were facing trial. After examination of PW 6 Najakat, PW 7 Sawai Hussain and PW 8 Ali Jan, application under Section 319 Cr.P.C came to be filed by the complainant seeking to summon as much as 18 persons to be co-accused to face trial.

[5]. The statement of the complainant while appearing as PW 7 was found to be at par with the statement made by him to the police i.e. Ex.P5 which showed that the proposed accused also inflicted injuries to deceased Fajrudin. Complainant did not claim any injury in his statement made to police Ex.P5 which was the subject matter of lodging of FIR. The said statement was made to the police even after one day of the occurrence. Dead body of Fajrudin was recovered prior to making of such statement i.e. Ex.P5 and even thereafter, complainant did not attribute any injury to anyone. Statement of Nazakat while appearing as PW 6 does not advance the case of the complainant in any manner as the witness did not claim himself to be witness to the injuries inflicted upon Fajrudin. Statement of Ali Jan while appearing as PW 8 is sought to be projected in the helm of affairs. If his statement in entirety is read with reference to Ex.D1 i.e. statement made by him under Section 161 Cr.P.C., the credibility of the witness in the context of summoning the additional accused under Section 319 Cr.P.C would be exposed.

Reading of entire statement of PW 8 would also not advance the case of the complainant in order to attract provision in terms of Section 319 Cr.P.C inasmuch as that requirement of law in terms of Section 319 Cr.P.C has to be on extraordinary note. Strong and cogent evidence is required for such an exercise. The material collected by SIT and the statements made by the witnesses do not make out any case of extra nexus in terms of Section 319 Cr.P.C with the *prima facie* allegation in the FIR. The material on record if tested on the touchstone of the observations made by the Hon'ble Apex Court in **Hardeep Singh Vs. State of Punjab and others, 2014(1) RCR (Criminal) 623** would lead to a conclusion that no such material exist to proceed against the persons who are found innocent by the police.

[6]. In view of aforesaid, this Court does not find any legal ambiguity in the impugned order dated 15.12.2016 passed by Additional Sessions Judge, Nuh. Consequently, the present petition is dismissed.

(RAJ MOHAN SINGH)
JUDGE

14.02.2017
prince

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No