

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

265

CRR No.278 of 2017 (O&M)
Date of decision: 19.07.2017

Sandeep

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. G.S. Bedi, Advocate
for the petitioner.

Mr. Sulinder Kumar, AAG, Haryana.

RAMENDRA JAIN, J. (ORAL)

Prayer in the instant petition under Section 401 Cr.P.C. has been made to set aside the order dated 10.01.2017 passed by the learned Additional Sessions Judge, Narnaul dismissing the application of the petitioner under Section 319 Cr.P.C. to summon Sajjan Singh and Surender as respondents No.2 and 3 to face trial in case FIR No.255 dated 08.06.2015 under Section 304 read with Section 34, IPC, Police Station City Narnaul.

In nutshell, the case of the prosecution is that on 07.06.2015, Santosh Kumar, father of the complainant-Dr. Sandeep Yadav alongwith his brothers had gathered for partition of their properties with the accused persons. During that process, around 6.30 p.m., accused Hanuman and respondents No.2 and 3, namely, Sajjan Singh and Surender Singh grappled with Santosh Kumar. Accused-Hanuman gave kick and fist blows to

Santosh Kumar. As a result thereof, after taking two long breath, Santosh Kumar fell on the ground and died on the way to the hospital. The complainant-Sandeep reported the matter to the police naming all three persons namely Hanuman, Sajjan Singh and Surender Singh as accused. However, the Investigating Officer did not challan Sajjan Singh and Surender Singh and filed final report only against accused-Hanuman.

Learned counsel for the petitioner contends that both the respondents namely Sajjan Singh and Surender Singh neither appeared before the Investigating Officer nor they were ever arrested and joined the investigation and therefore, placing them in column No.2 as innocent in the final report under Section 173 of Cr.P.C by the Investigating Officer, is illegal. He further contends that complainant-Dr. Sandeep Yadav and eye-witness, namely, Jagdish Parsad, in their respective statements under Section 161 Cr.P.C. during investigation and thereafter in their examinations-in-chief before the trial Court as PW-1 and PW-2 testified about the specific role of the aforesaid accused, but despite that the trial Court illegally and wrongly dismissed the application under Section 319 Cr.P.C. In support of his contention, learned counsel for the petitioners has placed reliance upon the judgment rendered in 'Ram Pal Singh Vs. State of U.P.', 2009 (1), Crimes 294.

Vakalatnama on behalf of respondents No.2 and 3 is rejected as none has appeared on their behalf. Simply the Vakalatnama has been thrown away by some one on the desk of the Reader.

I have given anxious considerations to the submissions made by learned counsel for the petitioners.

Admittedly, PW-1 Sandeep Kumar was not an eye-witness to

the occurrence. His statement is completely hearsay qua the incident. PW-2 Jagdish Prasad in his examination-in-chief has testified that when he and his brother Ram Avtar tried to intervene, respondent-Sajjan Singh and Surender Singh (respondents No.2 and 3 herein) caught hold him.

The powers conferred by Section 319 Cr.P.C. are extraordinary and discretionary in nature. Such powers have to be used sparingly and only if compelling reasons exist for taking action against a person against whom action has not been taken earlier.

Undisputedly, there is no allegation against aforesaid Sajjan Singh and Surender Singh that they had also caused some kick and fist blows to the deceased-Santosh Kumar. The said act is only attributed to accused-Hanuman, on account of which, Santosh Kumae fell down and died on the way to hospital.

The testimony of PW-1, Sandeep and PW-2, Jagdish Parsad discussed above do not, from any angle, justify the summoning of respondents No.2 and 3 as an additional accused to face trial, in-as-much as, both of them simply caught hold of Jagdish Prasad and his brother and did not allow them to intervene.

In view of the above facts and circumstances, the impugned order dated 10.01.2017 passed by the learned Additional Sessions Judge, Narnaul is affirmed and the present revision petition is dismissed.

(RAMENDRA JAIN)
JUDGE

19.07.2017
Dinesh Bansal

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No