

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

**CRM-M- 21501 of 2014 (O&M)  
Date of decision: February 14, 2018**

**Rahul Singh**

**.....Petitioner**

**Versus**

**State of Haryana**

**.....Respondent**

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**CORAM : HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU**

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Present: Mr. N.S. Shekhawat, Advocate, for the petitioner.

Mr. Vikramjeet Singh, Addl. A.G., Haryana.

Mr. Manoj Tanwar, Advocate, for the complainant.

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**MAHABIR SINGH SINDHU, J. (ORAL)**

Challenge in the present petition filed under Section 482 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C') is to the impugned order dated 16.01.2014 passed by learned Judicial Magistrate, Ist Class, Mahendergarh (Annexure P/1) as well as revisional order dated 15.05.2014 passed by Additional Sessions Judge, Narnaul (Annexure P/2), whereby the said order has been upheld and on the basis of an application moved under Section 319 Cr.P.C filed by the prosecution, the petitioner along with Yogesh and Brijesh have been ordered to be summoned to face trial in an offence under Section 323/325/34 IPC arisen out of an FIR No. 253 dated 28.06.2011 registered at Police Station Mahendergarh.

It is contended by learned counsel for the petitioner that right

from the date of occurrence and thereafter registration of FIR it was Rahul Singh S/o Ram Dayal who was arrayed as an accused and some injuries were also attributed to him, but not the petitioner. Further contended that even during the course of investigation also, that includes the statement of Sumitra Devi sister of the injured, wherein she specifically stated that it was Rahul S/o Ram Dayal, who caused injuries to Jawahar Singh and not named the present petitioner. Still further contended that it has also come on record that during the pendency of the case, the petitioner has joined the Indian Army and is serving as such, therefore, just to have a grudge on account of his selection in Indian Army, he has been arrayed as an accused in the present petition by way of an application under Section 319 Cr.P.C.

Per contra learned counsel for the complainant has vehemently opposed the contentions of learned counsel for the petitioner on the premises that in the entire village there is no person in the name of Rahul S/o Ram Dayal and it is only the petitioner i.e. Rahul S/o Anandpal who inflicted the injuries to complainant – Jawahar Singh (PW-1).

Heard both sides and perused paper-book.

The occurrence in the present case is alleged to have taken place on 02.06.2011 at 5.30 – 5.45 PM i.e. day time. Initially DDR No.16 was registered on 03.06.2011 at 3.20 PM on the basis of statement of injured – Jawahar Singh (PW-1) and he got recorded that Anandpal S/o Ram Dayal was involved in inflicting the injuries to him, but not named the petitioner.

Thereafter DDR No.16, dated 03.06.2011 was converted into FIR No. 253 dated 28.06.2011 under Section 323/325/34 IPC P.S. Mahendergarh against Shishpal S/o Munshi Singh, Yogesh S/o Shishpal,

Brijesh, S/o Kartar, Rahul S/o Ram Dayal, Bhim Singh S/o Banwari Rajput, Kailash w/o Shishpal, Babli w/o Kartar and Anita w/o Anandpal and in the FIR (P-7) also it is Anandpal S/o Ram Dayal who was involved in committing the crime alongwith others, but not the petitioner. During the investigation, sister of injured Jawahar Singh i.e. Sumitra Devi in her statement dated 28.06.2011 under Section 161 Cr.P.C, specifically named Rahul S/o Ram Dayal and name of petitioner is not mentioned. It is only on 16.01.2014, that injured- Jawahar Singh in his statement before the learned Trial Court (P-9) deposed that Rahul S/o Anandpal (petitioner) gave him kick blow on his mouth. Consequently the application under Section 319 Cr.P.C was filed by the prosecution and the same was allowed by both the Courts below. The sole basis for summoning of the present petitioner as well as two co-accused are testimony of PW-1 i.e. the injured Jawahar Singh and impugned order has been challenged by the petitioner- Rahul S/o Anandpal Singh only.

Perusal of testimony of PW-1 nowhere reveal that he has made any such deposition that there is no person in the name of Rahul S/o Ram Dayal in their village; or that police wrongly recorded the name of Rahul S/o Ram Dayal instead of Rahul S/o Anandpal. It has also not come in the testimony of PW-1 that it has happened on account of some mistaken identity, rather he has admitted that both the parties are related to each other as accused are sons of his uncle.

Although learned counsel for the complainant again tried to justify by stretching his argument to the extent that there is no other person in the name of Rahul S/o Ram Dayal in the entire village and the same can

be verified, but as discussed above, the perusal of the testimony of Jawahar Singh PW-1 nowhere reveals that such a deposition has been made by PW1 before the learned trial Court.

Even during the course of hearing before this Court also, learned counsel for the complainant has admitted that both the parties i.e. complainant as well as the present petitioner are closely related to each other and thus it cannot be a case of mistaken identity as well. Still further there is no allegation that police has wrongly recorded the name of accused as Rahul S/o Ram Dayal instead Rahul S/o Anandpal.

In view of the above, it is apparently clear that there is no material available on record to summon the present petitioner in the aforementioned FIR as an additional accused on the basis of an application under Section 319 Cr.P.C.

Resultantly, this Court is fully concerned that the impugned orders passed by both the Courts below are unsustainable in law as the same do not fulfill the parameter of Section 319 Cr.P.C, qua the petitioner.

Accordingly, the present petition is allowed and the impugned order dated 16.01.2014 and 15.05.2014 qua the petitioner are set aside.

**( MAHABIR SINGH SINDHU )**  
**JUDGE**

**February 14, 2018**  
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| 1. | Whether reportable?          | <b>Yes / No</b> |
| 2. | Whether reasoned / speaking? | <b>Yes / No</b> |