

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

CRM-M-27279-2018

Date of Decision:17.10.2018

Sheo Chand @ Chandi Ram

.....Petitioner

Versus

State of Haryana and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr. Vivek Khatri, Advocate,
for the petitioner.

Mr. Manish Bansal, D.A.G., Haryana.

HARI PAL VERMA, J.(Oral)

Prayer in this petition filed under Section 482 Cr.P.C. is for setting aside the impugned order dated 15.03.2018 (Annexure P-4) passed by learned Judicial Magistrate 1st Class, Hisar, whereby on an application filed by respondent No.2-complainant under Section 319 Cr.P.C., petitioner has been summoned to face trial along with other accused in case FIR No.731 dated 28.08.2016 under Sections 323, 341, 325, 34 IPC, registered at Police Station Sadar Hisar.

Challenge has also been laid to the order dated 21.05.2018 (Annexure P-5), whereby the revision petition filed by the petitioner against the summoning order dated 15.03.2018, was dismissed by learned Additional Sessions Judge, Hisar.

Mr. Vikas Bishnoi, Advocate, has put in appearance on

behalf of respondent No.2-complainant and filed his power of attorney, which is taken on record.

Learned counsel for the petitioner has argued that in the FIR, there is no allegation against the petitioner that he has given injuries to complainant-Vinod and the police has conducted a thorough investigation wherein the petitioner was found innocent. Despite there being no material with the trial Court, still on an application filed by complainant-respondent No.2 under Section 319 Cr.P.C., the petitioner has been summoned. He has referred to statements of Vinod Kumar son of Kishan Lal and Gopal @ Pappu son of Mange Ram attached with the reply submitted by way of affidavit of Sh. Amarjeet Kataria, HPS, Deputy Superintendent of Police, Hisar. Relying upon the statements so made by these persons, counsel has argued that in fact petitioner has helped the injured and has taken him to the hospital on the motorcycle of Vinod Kumar son of Kishan Lal. Similarly, Gopal @ Pappu son of Mange Ram was an eye witness of the incident, who has made a statement that it was Bhader Singh who caused injury to complainant-Vinod Kumar, though Bhader Singh also received injury in this spur. Gopal @ Pappu was present at a distance of two acres, but he witnessed the incident. He has specifically stated that Chandi Ram (petitioner) did not cause any injury to the complainant.

Learned counsel for respondent No.2-complainant has argued that presence of Chandi Ram was duly established during investigation and he had caught hold of the complainant, therefore, he

is a co-accused with Bhader Singh and there is no illegality in the orders passed by the Courts below.

I have heard learned counsel for the parties.

Vinod Kumar son of Kishan Lal and Gopal @ Pappu son of Mange Ram are the eye witnesses to the occurrence. They have specifically stated that the petitioner has not caused any injury to the complainant. In fact Vinod Kumar and Bhader Singh have gone to the extent to state that it was the petitioner with whose help the injured was brought to the village doctor on his (Vinod Kumar) motorcycle. However, instead of giving any credit to the petitioner for helping him, the complainant has straightway named him as a co-accused. The statements of Vinod Kumar son of Kishan Lal and Gopal @ Pappu, if perused, reflect that the petitioner has neither caused any injury nor he had caught hold of the complainant in any manner. The petitioner had rather facilitated the injured and taken him to a hospital.

Summoning of an additional accused is a serious issue and unless some fresh evidence has come on record so as to impel the Court to summon such person as an additional accused, summoning should not be resorted to in a mechanical manner.

Reliance can also be placed on the order dated 28.09.2017 passed by this Court in CRM-M-36549-2017, titled as **Laxmi Versus State of Haryana and another**, 2018(1) R.C.R. (Criminal) 987, **Rashpal Singh Versus State of Punjab and another**, 2017(2) Law Herald 1398 and the judgment of Orissa High Court in **Trilochan**

Rout Versus State of Orissa and others, 2017(1) DMC 859.

Thus, the power under Section 319 Cr.P.C. is not to be exercised in a routine and mechanical manner. It is an extra-ordinary power which should be used with caution and only if compelling reasons exist for proceeding against an accused against whom action has not been taken. While exercising their power, Court has to take note of the material placed by the investigating agency in order to assess the prospect of conviction and the evidence under Section 319 of Cr.P.C., has to be broadly understood and not literally i.e. like evidence brought during trial. Unless cogent evidence is brought before the trial Court, summoning should not be resorted to. In the case in hand, no such material has been brought on record to establish that the petitioner in any manner has caused any injury to the complainant.

In view of the above, the present petition is allowed and the impugned orders dated 15.03.2018 (Annexure P-4) passed by learned Judicial Magistrate 1st Class, Hisar and dated 21.05.2018 passed by learned Additional Sessions Judge, Hisar, are hereby set aside.

October 17, 2018
seema

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No