

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

**CRM-M-42754-2017(O&M)
Date of decision:-9.2.2018**

Dheeraj and others

...Petitioners

Versus

State of Haryana and another

...Respondents

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

Present : Mr.Aman Bansal, Advocate
for the petitioners.

H.S. MADAAN, J.

By way of filing the present petition under Section 482 Cr.P.C., petitioners – Dheeraj, aged about 38 years and Deepak aged about 31 years both sons of Bishan Swaroop and Kanta Devi, aged about 53 years wife of Mukesh Kumar seek quashing of order dated 29.8.2017 passed by Judicial Magistrate Ist Class, Narnaul vide which while allowing the application under Section 319 Cr.P.C., the petitioners have been summoned as additional accused to face trial under Sections 323/506 IPC as well as order dated 26.10.2017 passed by learned Additional Sessions Judge, Narnaul, vide which revision petition preferred by petitioners against the said order passed by Judicial Magistrate Ist Class, Narnaul had been dismissed.

Briefly stated, facts of the case are that the FIR was registered on the basis of written complaint by complainant Amit Kumar Goyal son of Murlidhar, resident of Narnaul, which he submitted to SHO, P.S. City, Narnaul stating therein that on 20.3.2016 his uncles Bishan Lal and Mukesh had entered their shop and started giving beatings to them asking them to withdraw the civil suit regarding the property; that they threatened to cause more violence and to kill the entire family in future; that on 21.3.2016 at about 12/12:30 p.m., Bishan Lal, Mukesh, Dheeraj, Deepak, Kanta wife of Mukesh along with 2-3 other persons entered shop of the complainant being armed with knives and rods and started abusing and giving beatings to complainant and his brother Narayan; that they had used and rods and punches; that Deepak and Dheeraj hit the complainant with rods on his leg; that Mukesh hit Narayan on his shoulder with rod, then Bishan Swaroop tried to kill the complainant with knife but complainant saved himself and knife hit his hand instead of chest; that the assailants continued beating complainant and his brother and snatched gold chain and Rs.2 lakhs; that on alarm being raised by the complainant and his brother Narayan when certain other persons came from nearby area, then the assailants left the spot. The matter was investigated. After completion of investigation and other formalities challan was filed in the Court against Bishan Sawrup and Mukesh only. However, during trial on an application under Section 319 Cr.P.C., the petitioners were summoned as additional accused.

I have heard learned counsel for the petitioners besides going through the record.

It has to be kept in mind that the petitioners are named in

the FIR and specific part in the incident has been attributed to them. Vide impugned order passed by the trial Magistrate, he has specifically mentioned that he is conscious of the fact that power under Section 319 Cr.P.C. is to be used sparingly and primarily to advance the cause of criminal justice but not as a handle at the hands of complainant to cause harassment. He has referred to the law on the subject also in paras No.3 and 4 of the impugned order dealing with pre requisites for summoning of additional accused and in para No.5 of the order has given reasons for allowing the petition. For ready reference, para No.5 is reproduced as under:

Perusal of the records shows that specific allegations have been made against Dheeraj, Deepak and Kanta Devi in the complaint/FIR moved on behalf of the complainant. When the said witness stepped in the witness box has specifically averred that the said persons were armed with weapons and attacked him on the relevant date. The mode and manner in which the alleged injuries were caused by Dheeraj, Deepak and Kanta Devi have been specifically explained. It also transpires from record that Dheeraj and Deepak are stated to have caused injuries on the thigh of the complainant. The injuries mentioned in the MLR stands corroborated with the aforesaid version. Needless to say, specific allegations have been averred against Kanta Devi as well. The prosecution has failed to put forth any cogent reason for not forwarding Dheeraj, Deepak and Kanta Devi before the Court for facing the trial. A bald

statement/observation is made in the challan stating non-involvement of Dheeraj, Deepak and Kanta Devi in the alleged occurrence. This particular fact also does not inspire the confidence of the Court. Hence, this Court is of the considered are humble opinion that there are specific allegations and sufficient evidence against Dheeraj, Deepak and Kanta Devi for the offences punishable under Sections 323/506 of the Indian Penal Code, 1860. In view of the evidence available on record, Dheeraj, Deepak and Kanta Devi are directed to be summoned for the offences punishable under Sections 323/506 of the Indian Penal Code, 1860 for the next date of hearing.

When this order was challenged in the Court of Sessions, learned Additional Sessions Judge, Narnaul had also properly applied his mind upholding the impugned order passed by Judicial Magistrate Ist Class, Narnaul and dismissed the revision petition.

Learned counsel for the petitioners referred to citation **Michael Machado & Anr. Versus Central Bureau of Investigation & Anr., 2000(2) Crimes 23**. However, this authority has been kept in mind by learned Judicial Magistrate Ist Class, Narnaul and reference to the same is there in para No.3 of the impugned order. As regards the another authority i.e. **Krishnappa Versus State of Karnataka, 2004(4) R.C.R.(Criminal)678**, by the Apex Court, the trial Court has kept in mind the ratio of the authority **Hardeep Singh Versus State of Punjab, 2014 RCR (Criminal) 623**. In that way, the latest on the subject has

been discussed while allowing the application.

The orders passed by the Courts below are well reasoned ones, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

The petition being without merit stands dismissed accordingly.

(H.S.MADAAN)
JUDGE

9.2.2018
Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No