

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

CRM-M-8037-2017 (O&M)

Date of Decision:01.10.2018

Krishan Kumar

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Kunal Dawar, Advocate
for the petitioner.

Mr. R.K. Doon, A.A.G. Haryana.

Mr. Amardeep Sheoran, Advocate
for respondents No.2 and 3.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has sought for quashing of order dated 20.12.2016 and 27.2.2017 (Annexures P-1 and P-2 respectively) whereby application under Section 319 Cr.P.C to summon respondents No.2 and 3 as additional accused stand rejected.

2. Learned counsel for petitioner submitted that initially on 9.6.2015 an application under Section 319 Cr.P.C was moved for the first time. Application was decided. Thereafter, matter was heard by the Revisional Court and upheld the order on 30.04.2016. Further second application was filed under Section 319 Cr.P.C to summon respondents No.2 and 3 and it has been decided on 20.12.2016 while rejecting the application. Consequently, it has been upheld by the Revisional Court on 27.2.2017. It is further submitted that statement of PW-2 Rohtash was recorded on 17.10.2016. The same has been referred. However, there is no discussion to the extent how the Kailash Devi and Nisha were responsible for causing injuries. What has been stated is “Sonam nowhere stated in her

statement recorded under Section 161 Cr.P.C that additional accused inflicted injuries to her. PW-1-Krishan Kumar and PW-2-Rohtash stated that Kailash wife of Krishan inflicted Farsa blow”. Other than this nothing has been appreciated like allegations in the FIR against Kailash and Nisha so also with reference to MLR i.e. Injury No.2 and 8. Thus, court below have not appreciated statement of Rohtash; allegations in the FIR read with the MLR. Learned counsel for the petitioner relied on two decisions rendered in the case of Ashok Singh v. State of U.P. 2008 (62) AcrC 602 and CRM-M-37845-2012 titled as Raghuwant Singh v. State of Punjab and another; decided on 4.2.2014.

3. Per contra, learned counsel for respondents No.2 and 3 submitted that one application filed under Section 319 Cr.P.C is rejected with reference to the available records and this order has been upheld by the revisional court, second application is impermissible. It was also submitted that in an identical matter Supreme Court in the case of Brijendra Singh and others v. State of Rajasthan; 2017 (3) R.C.R. (Criminal) 374 (see: Para-15), it is held that how the application filed under Section 319 Cr.P.C is required to be examined with reference to statement under Section 161 Cr.P.C. Thus, there is no infirmity in the orders of court below dated 20.12.2016 and 27.2.2017.

4. Heard learned counsel for the parties.

5. Crux of the matter in the present case is whether second application under Section 319 Cr.P.C is maintainable or not? Further prima facie material has been considered by the court below for the purpose of entertaining application filed under Section 319 Cr.P.C or not?

6. Perusal of FIR dated 4.4.2012, there is specific allegations

against respondents No.2-Kailash and respondent No.3-Nisha to the extent of causing injury to the injured persons. Further statement of PW-2 Rohtash is crystal clear to the extent that Kailash and Nisha how they caused injury so also MLR i.e. Injury No.2 and 8. The above mentioned material has not been taken into consideration while considering first application on 9.6.2015 and 30.4.2016 by the court below. Even though statement of PW-2 Rohtash is dated 17.10.2016 as on the date of first application filed under Section 319 Cr.P.C statement of PW-2 was not available. Statement of PW-2 is required to be taken into consideration while considering second application in view of the decisions rendered in Ashok Singh v. State of U.P. 2008 (62) AcrC 602 and CRM-M-37845-2012 titled as Raghuwant Singh v. State of Punjab and another; decided on 4.2.2014. Para 7 of Ashok Singh's case (supra) and relevant extract of Raghuwant Singh's case (supra) read as under:

“7. So far as the order dated 5.7.2007 is concerned as alleged by the learned counsel for the applicant that the second application was moved under Section 319 Cr.P.c., when other evidence was also adduced in the Court concerned but it was rejected only on the ground that it was not maintainable and the trial Court was having no jurisdiction to revise its own order. The view taken by the learned trial Court in rejecting the second application under Section 319 Cr.P.C. Is not proper because at this stage of the trial whenever sufficient evidence is adduced for summoning the proposed accused, the application under Section 319 Cr.P.C may be filed and the trial court has power to invoke power conferred under Section 319 Cr.P.C. If on the same material second application under Section 319 Cr.P.C is filed which is not maintainable but if after rejection of the first application under Section 319 Cr.P.C some other evidence is adduced in the Court concerned

and on the basis of other evidence if application under Section 319 Cr.,P.C is filed, the same shall be heard and disposed of on its merit such application is maintainable, the same cannot be rejected by saying that the Court has no jurisdiction to revise in its order and it was not maintainable.”

“As regards the argument that second application is not maintainable, I find that there is no such bar that second application under Section 319 Cr.P.c. Cannot be filed. The order of the Sub Divisional Judicial Magistrate was set aside it being not sustainable and was passed without discussing any evidence. Therefore, the application under Section 319 Cr.P.C can be filed second time also if some evidence is produced on the record against the accused, who are to be summoned.”

7. In view of the judicial pronouncements above read with factual aspect of case like FIR, PW-2 and MLR, second application is maintainable. Perusal of the impugned orders dated 20.12.2016 and 27.02.2017, it is evident that court below has not applied its mind while considering entire statement of Pw-2-Rohtash dated 17.10.2016. What has been considered is only referring to the injury caused by Kailash. Nothing has been stated in respect of Nisha and so also with reference to MLR-injury No.2 and 8.

8. Decision of the Supreme Court relied upon by the learned counsel for respondents No.2 and 3 is distinguishable having regard to the factual aspects of the present case, sufficient materials are available with reference to FIR (Allegations), MLR and statement of PW-2 dated 17.10.2016.

9. In view of these facts and circumstances, order dated 20.12.2016 and 27.2.2017 (Annexures P-1 and P-2 respectively) are set aside and matter is remanded to trial court/Judicial Magistrate Ist Class, Rewari for consideration of application filed under Section 319 Cr.P.C

afresh. Parties are hereby directed to appear before concerned court on the date fixed and co-operate in the matter. Trial Court/Judicial Magistrate Ist Class, Rewari, is directed to decide the application under Section 319 Cr.P.C at the earliest.

10. Petition stands allowed accordingly.

01.10.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**