

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-5848-2018 (O&M)

Date of decision : 12.2.2018

Neelam and others

... Petitioners

VERSUS

Gulshan Valecha

... Respondent

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Ajay Jain, Advocate,
for the petitioners.

RAJ SHEKHAR ATTRI, J.(Oral)

This is a petition under Section 482 Cr.P.C. for quashing of order dated 25.1.2018 passed by learned Additional Sessions Judge, Hisar ordering to summon the present petitioners to face trial as additional accused for offence punishable under Sections 452, 323, 506, 380, 482 Indian Penal Code.

The case of the prosecution as set out in the order (Annexure P-3) is that total 14 persons including the petitioners have entered the house of the complainant and caused injuries. However, they were not challaned by the investigating agency. That is why, an application under Section 319 Code of Criminal Procedure was filed to summon them as additional accused. The said application was dismissed by the learned Judicial Magistrate, 1st Class, Hisar vide order dated 24.10.2017 but the revisional court vide order dated 25.1.2018 (Annexure P-4) set aside the order of learned Judicial Magistrate and the petitioners were summoned as additional accused to face trial.

In support of his contention, learned counsel for the petitioners has also relied upon the judgment of this Court in **Ashok Kumar v. State of Haryana**; 2008 (27) RCR (Criminal) 118.

I have heard the learned counsel for the petitioners and have gone through the record.

In the FIR as well as in the deposition of PW10 Sadanand, the name and role of the petitioners has been duly mentioned which *prima facie* establishes that they may be summoned as additional accused to face trial for offence under Sections 452, 323, 506, 380, 482 IPC.

In **Hardeep Singh v. State of Punjab and others**; 2014(1) RCR (Criminal) 623, it was observed by Hon'ble Supreme Court as under : -

“In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under [Section 193](#) Cr.P.C. and the Sessions Judge need not wait till 'evidence' under [Section 319](#) Cr.P.C. becomes available for summoning an additional accused ? [Section 319](#) Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under [Sections 200, 201, 202](#) Cr.P.C.; and under [Section 398](#) Cr.P.C. are species of the inquiry contemplated by [Section 319](#) Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under [Section 319](#) Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the chargesheet. In view of the above position the word 'evidence' in [Section 319](#) Cr.P.C. has to be

broadly understood and not literally i.e. as evidence brought during a trial.”

The facts in Ashok Kumar's case (supra) are distinguishable as in that case there was no sufficient material on the record for the satisfaction of the Court to summon the petitioners as accused.

After going through the material available on record, this Court is of the considered opinion that the impugned order passed by learned Additional Sessions Judge does not suffer from any irregularity or illegality and does not call for any interference by this Court. Accordingly, the present petition is dismissed.

February 12, 2018
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No