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

CRR-4623-2015 (O&M)

Date of decision:16.10.2018.

YUDHVIR & ORS

... Petitioners

versus

STATE OF HARYANA & ANR

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Ashok Kaushik, Advocate,
for the petitioners.

Mr. Manish Bansal, DAG, Haryana,
for respondent No.1.

Mr. Manoj Kaushik, Advocate,
for respondent No.2.

HARI PAL VERMA, J. (Oral)

CRM-36983-2018

Prayer in this application filed under Section 482 Cr.P.C.is to place on record the certified copy of Annexure P-1 and order of acquittal of co-accused as Annexure P-3.

For the reasons stated in the application, same is allowed and the documents Annexures P-1 and P-3 are taken on record, subject to all just exceptions.

CRR-4623-2015

Petitioners have filed the present revision petition impugning the order dated 05.11.2015 passed by learned Additional Sessions Judge (1)

Palwal, whereby on an application filed by the complainant and forwarded

by the Public Prosecutor under Section 319 Cr.P.C., petitioners have been summoned to face trial under Sections 148, 323, 324, 427, 307, 506 read with Section 149 IPC.

Briefly stated, an FIR No.198 dated 13.04.2015 under Sections 148, 149, 323, 324, 506 IPC (Section 307 IPC added lateron), Police Station Sadar Palwal, District Palwal was registered at the behest of Sanjeev (complainant) that on 12.04.2015 when he was present in his house, he heard a noise of quarrel from outside. He came outside and noticed that the accused Hari Om, Inder, Sukhvir, Jairam, Yudveer, Bala and Rami were fighting with his cousin Ashok. Hari Om gave a pharsa blow on the head of Ashok and when the complainant (Sanjeev) tried to save Ashok from these assailants, Sukhvir attempted a lathi blow on his head which the complainant warded off with his left hand. As a result thereof, he sustained injury on his left hand. Thereafter, all the assailants started giving kick and fist blows to the complainant and his cousin Ashok. In the meantime, the aunt of the complainant Kalashi also reached on the spot and tried to save them from the accused. The accused Inder gave a sword blow on the head of Kalashi. Thus, the complainant, Ashok and Kalashi sustained injuries at the hands of accused persons. Hearing the alarm, Sandeep, Ompal and Mahavir came towards the spot and on noticing them coming, all the accused fled away along with their respective weapons and gave life threat to the complainant's family. Hari Om was equipped with pharsa, Inder was equipped with sword whereas the other accused were equipped with lathi and dandas. The accused Bala was equipped with a brick. The injured Kalashi and Ashok were referred to Safdarjung Hospital, Delhi. However, on account of their serious

Hari Om, Rami etc. had broken panes of the car with bricks. The reason for this fight was that Hari Om and Sukhvir used to stand in front of house of the complainant and, therefore, his cousin Ashok had objected the same many times and requested them many times not to stand there. The police conducted investigation in the case and found the present petitioners innocent. However, it is on the basis of the application under Section 319 Cr.P.C. filed by the complainant Sanjeev (PW1) and forwarded by the Public Prosecutor, petitioners have been summoned in the case by the trial Court.

Learned counsel for the petitioners has argued that summoning of the petitioners has been made without there being any material before the trial Court. The petitioners have been implicated falsely and they have not caused any injury to the complainant party and it is for this reason, they were found innocent. There is a contradiction in the statement of PW1 before the court and the statement made before the police. The police has gone into the investigation deeply and has found the petitioners innocent. He has further argued that vide judgment dated 15.12.2017, the trial Court has concluded the trial and the accused Inder, Hari Om and Sukhvir have been convicted under Section 326 read with Section 34 IPC and they have been sentenced to undergo rigorous imprisonment for seven years, whereas the other co-accused Rami has been acquitted. The allegations against the petitioners were similar to that of Rami. Moreover, Bala against whom there is an allegation that she was holding a brick was not present at the time of incident and was attending a marriage in the family. Jai Ram and Bala are otherwise very old persons.

Learned counsel appearing on behalf of the complainant has argued that it is on the basis of the application filed under Section 319 Cr.P.C. which is based on the statement of complainant-Sanjeev, petitioners were ordered to be summoned in the case to face trial along with the other co-accused. He has further argued that the petitioners were present at the time of incident and, therefore, even if they have not caused any specific injury, still they are liable to be convicted with the aid of Section 34 IPC.

Learned State counsel has argued that the police has conducted investigation in a fair manner.

I have heard learned counsel for the parties.

This Court finds that the persons who were injured in the case are Ashok and Kalashi. The injury on the person of Ashok is a pharsa blow and that injury has been attributed to Hari Om, whereas the other injured Kalashi has got a sword blow which has been declared dangerous to life and that injury was attributed to Inder. The persons, namely, Hari Om and Inder, who have been attributed the injuries, have already been convicted by the trial Court vide judgment dated 15.12.2017. Except what has been stated in the initial version, no new material has been brought on record by the complainant which may warrant summoning of the petitioners as additional accused.

This Court in the case of **Hukam Chand and another Versus State of Haryana & another-2007(3) RCR (Criminal) 141** has observed that when an accused is found innocent by the police and his name has been kept in column no.2, mere statement of the complainant, which is only reiteration of allegation made in the FIR, cannot be considered as additional

statement, particularly when such statement has already been considered by the police. In order to summon a person under Section 319 Cr.P.C., there has to be some evidence before the Court which would indicate the complicity of the persons who are sought to be summoned. Mere statement of the complainant *ipso facto* cannot form the basis for summoning a person under Section 319 Cr.P.C. Further, reference may also be made to judgment of Hon'ble the Apex Court in the case of **Hardeep Singh Versus State of Punjab-AIR 2009 SC 483**, wherein it has been held that the power under Section 319 Cr.P.C. has to be exercised only if the Court is satisfied that the accused so summoned is in all likelihood would be convicted. Thus, when the facts of the present case are analyzed in view of judgment of Apex Court in **Hardeep Singh** (*supra*), it is found that the complainant has clearly failed to make out a case for summoning under Section 319 Cr.P.C.

Summoning of an accused should not be made in casual or mechanical manner. The prosecution must establish some prima facie case for summoning. Thus, summoning more particularly under Section 319 Cr.P.C. should be ordered sparingly.

The Hon'ble Supreme Court in the case in **Pepsi Foods Limited and another Versus Special Judicial Magistrate and others-(1998) 5 Supreme Court Cases 749** has held as under:-

“Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of

allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

In view of above, this Court finds that no injury has been attributed to the petitioners which may warrant their summoning. The police has already conducted investigation in the case and have found the petitioners innocent. Petitioners have not been attributed any injury in the case. Moreover, similarly placed accused has already been acquitted by the trial Court. Thus, this Court finds that the complainant has failed to make out a case of summoning of the petitioners accused.

Accordingly, the order dated 05.11.2015 passed by learned Additional Sessions Judge (1), Palwal, summoning the petitioners as additional accused, is set aside and the present revision petition is allowed.

(HARI PAL VERMA)
JUDGE

16.10.2018
sanjeev

Whether speaking/reasoned
Whether Reportable:

Yes/No.
Yes/No.