

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

CRR-3835-2017

Date of decision:-12.2.2018

Naresh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

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

Present: Mr.Abhinav Gupta, Advocate
for the petitioner.

H.S. MADAAN, J.

This revision petition is directed against the order dated 31.7.2017 passed by the Court of learned Additional Sessions Judge, Rewari vide which application under Section 319 Cr.P.C. for summoning of Rahul son of Narender, Vashu daughter of Narender and Ashish son of Rajender, all residents of Gangaicha Ahir, Police Station Sadar, Rewari as additional accused was dismissed.

Briefly stated, facts of the case as per prosecution story are that FIR in question was recorded on the basis of statement of complainant/injured Naresh Kumar son of Lal Chand of Ahir community,

resident of village Gangaicha Ahir, District Rewari, aged about 57 years wherein he stated that he is an agriculturist by avocation; that on 19.8.2016 at about 5:00 p.m., he along with his wife Bimla Devi and Leela Devi, wife of Nardev, who is brother of his wife was cutting grass from their plot; that on seeing them, Narender Kumar son of Ved Pal of their village came there and said that he had purchased the plot asking them to go out of the same; that after some time Rahul son of Narender, Vashu daughter of Narender, Mukesh wife of Rajender and Ashish daughter of Rajender armed with lathies and other weapons came there; that Rahul son of Narender handed over the iron rod to his father Narender exhorting his co-accused to kill the complainant and other persons present along with him; that Narender gave iron rod blow to the complainant hitting him on head, due to which blood started oozing out of the injury and complainant fell down, then Rahul gave blows on the hands and shoulder of the complainant while he was lying on the ground; that the complainant raised alarm, hearing that Krishan Kumar son of complainant and Satpal son of Lal Chand came to the spot and tried to rescue the complainant from the assailants; that then the assailants started giving beatings to Krishan Kumar and Satpal with their respective weapons; that the assailants gave beatings to the complainant, his son Krishan and his wife; that the complainant had become unconscious; that thereafter the assailants left the spot along with their respective weapons. The injured were taken to the hospital. After recording of FIR, the matter was investigated and only accused Narender and Smt.Mukesh wife of Rajender were challaned whereas Rahul son of Narender, Vashu daughter

of Narender and Ashish son of Rajender were found to be innocent and were not challaned though their names were kept in column No.2 of the challan.

During the trial, the prosecution moved an application under Section 319 Cr.P.C. for summoning of Rahul son of Narender, Vashu daughter of Narender and Ashish son of Rajender as additional accused, however, that application was dismissed by the trial Court.

Feeling aggrieved, the complainant has filed the present criminal revision petition.

I have heard learned counsel for the petitioner besides going through the record and I do not find any illegality or infirmity in the impugned order much less apparent on the face of it. Learned trial Court has kept in mind the principles laid down by the Apex Court in **Hardeep Singh Versus State of Punjab and others 2014(1) RCR(Criminal) 623** as well as the ratio of judgment passed in Criminal Appeal No.736 2017 titled **Brijendra Singh and others Versus State of Rajasthan** decided on 27.4.2017. It would be proper and appropriate to reproduce such observations:

No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than

the degree which is warranted at the time of framing of the charges against others in respect of whom charge sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity. Reference in this regard may also be made to the observations made by Hon'ble Supreme Court of India in Criminal Appeal No.736 of 2017 titled Brijendra Singh and others vs. State of Rajasthan decided on 27.4.2017.

Now coming to the facts of the present case, a perusal of the statement made by complainant/injured Naresh Kumar on the basis of which the FIR was registered and the statement made by him on oath in court show that only sweeping allegations have been levelled by him against the accused persons with regard to beatings alleged to have been given to him with the help of Lathi, danda and "gaitti ka baisa". The injury that has attracted section 307 IPC has been specifically attributed to accused Narender, who had already been sent up to face trial. No specific weapon or injury has been attributed to Vashu daughter of Narender and Ashish son of Rajender. On the basis of material collected during investigation the persons sought to be

summoned as additional accused were found to be innocent and not involved in the alleged occurrence. Apart from the statement made by complainant/injured in his examination in chief, there is no other material to support his verbal/ocular version. Thus the 'evidence' recorded during trial was nothing more than the statement which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. Merely on the basis of the statement of the complainant which was made before the investigating officer as well at the time of investigation, there is no further or new material produced before the Court which would indicate the involvement of the persons sought to be summoned as additional accused. In the instant case, it seems that the complainant wants to implicate and rope in as many members of the family of the accused as possible. The statement made by complainant during his examination in chief is also not corroborated from any other new or further evidence at this stage.

The order is well reasoned one. The trial Court has discussed the ruling cited by the State counsel i.e. **Sandeep Versus State of Haryana and another CRR No.1227 of 2012** decided on 31.5.2017 by a Co-ordinate Bench of this Court and then distinguished it for the reason that the facts were quite different. In the end, the trial Court has observed that no new material has come on record to indicate the involvement of the persons in the commission of alleged offence sought to be summoned

as additional accused.

Therefore, criminal revision petition challenging that order cannot survive and is dismissed accordingly.

12.2.2018

Brij

(H.S.MADAAN)

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No