

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

CRR-4683-2017

Date of decision:-10.5.2018

Naveen and others

...Petitioners

Versus

State of Haryana

...Respondent

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

Present: Mr.N.S. Shekhawat, Advocate
for the petitioners.

Mr.Gaurav Bansal, AAG, Haryana.

Mr.Anil Kumar Rana, Advocate
for the complainant.

H.S. MADAAN, J.

This revision petition is directed against the order dated 1.11.2017 passed by the Court of learned Additional Sessions Judge, Gurugram vide which he had summoned petitioners – Naveen, Indira, Sharanjeet and Dharamjeet under Section 319 Cr.P.C. to face trial along with the accused already facing trial.

Briefly stated, facts of the case as per prosecution story are that FIR in question was recorded on the basis of written complaint submitted by complainant – Sham Chand son of Shri Ram Saran, resident

of House No.930/27, Street No.11, Madanpuri, Gurugram to SHO, Police Station Sector-5, Gurugram wherein he stated that on 22.2.2016, his elder son Akash had gone on his motorcycle bearing registration No.HR-26AE-0211, Hero Honda CD Deluxe to their old house at Gurugram; that Pawan son of Parkash informed him that Dharamjeet and Saranjit sons of Jaggi Ram, Naveen and Akshay sons of Saranjit, Indira Devi wife of Saranjit, Rohit and Mohit sons of Dharamjeet, all residents of Gurugram armed with lathies/dandas had blocked the path of Akash in front of Guru Ravi Dass Temple, Gurugram and had caused injuries to him on his head, neck and face with lathies and dandas and Akash had become unconscious and fell down; that the assailants were threatening to kill him, however, some passersby had shifted Akash to Civil Hospital, Gurugram. According to the complainant, on getting this information, he went to Civil Hospital, Gurugram and shifted his injured son Akash to Medhanta Hospital for treatment. Formal FIR was recorded and the matter was investigated. After completion of investigation, challan against the accused was presented. However, vide supplementary challan dated 4.7.2017, the petitioners were exonerated by the prosecution. During the course of trial, on an application under Section 319 Cr.P.C. being moved by the complainant, the petitioners were ordered to be summoned as additional accused to face trial vide impugned order, which left the petitioners aggrieved and they have filed the present revision petition.

Notice of the petition was issued to the respondent – State and counsel representing the State put in appearance. The complainant has also appeared through counsel.

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

Learned counsel for the petitioners has argued that the complainant in this case Sham Chand himself had not seen the incident and whatever he stated in the complaint submitted to the police, which formed basis for registration of the FIR contains the version as told to him by others and he has no personal knowledge as to how the incident had taken place and how Akash had suffered injuries, though the complainant states that he was informed regarding the incident by Pawan and statement of Pawan was recorded during the trial, he had not named Sanjay as having seen the incident but even then Sanjay has been cited as a prosecution witness and his statement was recorded as PW10, the relevant part of his examination-in-chief is as under:

On 22.2.2016 at about 9:30 p.m., I had come from my house to a shop situated near Ravi Dass Mandir, Gurgaon to take some household articles. I noticed a large crowd there. I noticed Dharamjeet, Saranjeet, Naveen, Akshay, Rohit, Mohit and Indira there. All of them were armed with lathis and dandas. They were quarrelling with Akash. Akshay inflicted a danda blow on the head of Akash. Naveen gave lathi blow on the neck of Akash. He fell down, then Rohit gave a danda blow on his forehead. Mohit inflicted a piece of wood (used in the lantern) on his left ear. Thereafter, the other accused caused injuries mercilessly to Akash.

According to PW10 Sanjay, he had attributed four injuries to

specific accused while generally saying that all the accused had caused injuries to Akash. However, injuries actually found on the person of the injured were only two in number as has been observed in affidavit Ex.PW3/A of PW3 – Dr.Mohd. Irfan, Medical Officer, Civil Hospital, Gurgaon, who had medico-legally examined the injured at Civil Hospital, Gurgaon, which are as under:

1. Lacerated wound of triangular shape right parietal region of head. Loc present ent bleed present. Advice CT Head neuro surgeon opinion.

2. Lacerated wound over left ear. GC Sick.

The kind of weapon used opined to be blunt.

He further argued that the medical evidence does not support the ocular evidence. The injuries actually found are not suggestive of presence of several assailants and the trial Court while summoning the petitioners as additional accused has not kept this fact in mind.

Learned counsel for the petitioners has further argued that as a matter of fact injured had suffered injuries in a road side accident and none of the eye-witness was present there and it is for that reason his name is not mentioned in the MLR and rather word 'unknown' is written and in the MLR, it is shown to be a case of road side accident. Furthermore, PW1 – Dr.Jatinder Pal Singh, Radiologist, Medhanta Medicity Hospital, Gurgaon in his cross-examination had admitted as correct that such injuries as suffered by injured can occur in a road side accident. PW2 – Dr.Dhiraj Mishra, Radiologist, Medhanta Medicity Hospital, Gurgaon has also made such type of admission in his cross-

examination, whereas PW3 Dr.Mohd. Irfan, Medical Officer, Civil Hospital, Gurgaon, who had medico legally examined the injured at Civil Hospital, Gurgaon in his cross-examination stated that possibility of sustaining these injuries in case of vehicular accident or collision cannot be ruled out and that no opinion was sought from him regarding manner of sustaining injuries. Learned counsel for the petitioners has stated that the motive for false implication is there inasmuch as PW9 Sham Chand – complainant had admitted in his cross-examination that his son Akash was in love with Kajal daughter of Saranjeet and therefore they had beaten Akash. PW10 Sanjay in his cross-examination has admitted that he had lodged an FIR No.770 dated 20.9.2015, under Sections 304/34 IPC at Police Station Civil Lines for murder of his nephew Mohit naming Naveen son of Saranjeet and Saranjeet as accused though Naveen and Saranjeet were found to be innocent during investigation.

Learned counsel representing the complainant had though defended the order stating that there is no ground to upset the same but I find that in view of the medical evidence not supporting the ocular account as regards the assailants involved in the incident and injuries caused by them, there could be possibility of making an attempt to throw a net wide so as to rope in as many persons as possible of the opposite party in an incident of this nature since a trend exists in this region to do so.

Therefore, the impugned order summoning the petitioners as an additional accused is not sustainable, the same is hereby set aside by way of acceptance of this revision petition. However, the trial Court may

pass a fresh order keeping in view all the facts and circumstances of the case including the medical evidence, in accordance with law.

Copy of the order be sent to the trial Court for information and necessary action.

10.5.2018

Brij

(H.S.MADAAN)**JUDGE****Whether reasoned/speaking : Yes/No****Whether reportable : Yes/No**